

The Bhowal Case

Compiled & edited by

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INTRODUCTION

THE Bhowal Kumar's Case, or more popularly called "Bhowal Case" or "Bhowal Sannayasi Case" which is well known to the readers of News Papers and to the mass alike, created a sensation of wonder through out the length and breadth of the country. Through out the long period (over 2 years and 8 months), when the case was going on in open Court, people did not feel tired to attend the court regularly and they formed it as their habit to read scrutinisingly the report of the news papers daily. The illiterate even would flock round the man engaged in reading the paper to hear what had happened that day. Time did not abate but rather increased the interest. The case is really a marvel. During trial the court room was packed to its full by audience every day. On the occasions when important witnesses and experts were examined the court room could hardly accommodate the audience and hundreds of people had to go away disappointed for want of space. The eagerness and suspension of the people knew no bounds before the delivery of the judgment. This came to a close when on 24th August, 1936, Mr. Pannalal Bose, the Additional District Judge, Dacca delivered his learned judgment.

The mystery which shrouded the life of **Kumar Ramendra Narayan Roy**, the second Kumar of Bhowal, (Dacca, Bengal) after the unfortunate incident which happened during his stay at Darjeeling in 1909 and its disclosure on his return after about 12 years in the garb of a Sadhu or Sannyasi, aroused a keen interest amongst the public, not only in Bengal but over the whole of India, nay, even outside. The interest grew all the more keen when the sadhu declared at Joydebpur on 4th May, 1921, that he was none other than the second son of **Raja Rajendra Narayan Roy Bahadur** of Joydebpur and claimed one-third share of the Bhowal Raj Estate.

Naturally in such a case the events that followed must be interesting; and these engaged the serious attention of all. The love and regard for truth and its establishment caused every body mad to watch to its ultimate result. The Kumar being baffled in all his attempts to regain his share of properties brought a suit in the court of the First Subordinate Judge of Dacca in the early part of 1930 which was eventually transferred to the file of Mr. Pannalal Bose, the Subordinate Judge who during the course of the trial was promoted to be an Additional District and Sessions Judge of Dacca. The suit was keenly contested by his wife and others. The case is unique in its character in the legal history of the world for its duration and number of witnesses coming from various stations of life including medical, mental photo-

graphic, handwriting-experts and Artists and also members of Indian Civil Service, Zemindars, Barristers, advocates, pleaders, professors etc. etc.

The trial commenced in open court on the 27th November, 1933 and its hearing concluded on the 21st May, 1936 without any break except holidays and special occasions. About 1069 witnesses on the plaintiff's side and 479 on the defence side were examined both on commission and in the open court; photos and documents numbering over 2000 were exhibited in this case. The historic judgment was delivered on the 24th August, 1936, and it is a lengthy one covering over 532 closely typed fullscap pages. The result of the suit is that the plaintiff Kumar Ramendra Narayan Roy obtained a decree with costs; and his status and title to properties have been declared and established. The judgment being a lengthy one the full text of it has not yet been published, though the whole country is eagerly awaiting to know the full text of it with reasonings given and conclusions arrived at by the learned Judge. To remove the anxiety and satisfy the curiosity of the people full text of the said judgment is published in a book form. It is hoped that the book will warmly be received by the general reading public.

It is keenly expected, every educated man in the civilised world will find some interest or other in going through the book as it reads like a romance. A short

description of the Bhowal Raj-family with a short history and Geography of Bhowal is given below to facilitate study of the judgment and to have a clear conception of the case :—

The Parganah Bhowal spreads over the districts of Dacca and Mymensingh (Bengal) and it is an ancient place with historical importance and interests. Ruins of many ancient buildings, temples, fort, tanks and roads are found scattered over this Pargana.

Historians differ with regard to the origin of the name—"Bhowal". Some suggest that it is associated with the name of Bhabapal or Bhadrupal whose descendant, Shishupal once reigned in Bhowal.

Some suggest that this name "Bhowal" originated from the word "Bhagalaya"—the residence or Kingdom of Bhaga or Bhaga Dutta. These Kings—Bhabapal, Bhadrupal, Bhaga and Bhaga Dutta are supposed to have existed in the days of the Mahabharat. Some are also of opinion that 'Bhowal' was formerly known also as Anti-bhowal derived from "Antibol"—the name of an ancient place situated on the Bank of the Brahmaputra. The present "Antia" and 'Bhowal' are offshoots of this name 'Antibol' and have been attached to two adjoining parganas, viz—Antia and Bhowal.

Tradition also goes that the name owes its origin from the Pathan ruler of the place named Bhowal Gazi, one of the twelve Bhuiyas of Bengal. One of the descendants of this Gazi family gave up his right in favour of his three officers (one Brahmin and two kayesthas) who paid revenue to the Moghul Kings and were recognized as Zeminders. The Brahmin officer became the owners of 9 annas share of the pargana and is the ancestor of the present Raj-family. The two Kayestha officers had the remaining 7 annas share of the pargana and founded the two neighbouring Estates viz—Baldha and Pubail.

Whatever may be the historical origin of the name 'Bhowal' the vast area of land covering about 600 Sq. miles and bounded on the North by Antia Pargana and Alapsingh Pargana, on the South by the city of Dacca and the river Buriganga and on the east by the River Laksha and Maheswardi Pargana and on the west by Kasimpur and Durgapur, is popularly known as Bhowal Pargana.

This Pargana is washed by the river Laksha, the Balu, the Chillai, the Torag, the Nagda, the Bannar, the Kali-Bannar, the Brahmaputra etc.

The Land of this Pargana is higher in level than the neighbouring lands and it is uneven. But the land is fertile and productive of various fruits, crops and vege-

ables. Major Portion of this Pargana is covered with "gazari" forest which supplies Dacca, Mymensingh and other neighbouring districts with fuel and timber. Some parts of this Pargana being dense forests are unfit for human habitation and abound with tigers, boars, deer and other wild animals. In old days herds of elephants were found in Bhowal forests. Zaminders and high officials very often visit Bhowal on hunting excursions.

Bhowal Raj-family are the Zaminders of the major portion of the Pargana with Joydebpur as their headquarters. The ancient name of Joydebpur was Pirabari, but from the time of Joydev Narayan Roy, one of the ancestors of the present Raj-family, the place has been known as Joydebpur after him. Joydebpur is on the Dacca section of the E. B. Ry. It is 20 miles north of Dacca and about 56 miles south of Mymensingh. Kaliganj, an important place in the Bhowal Pargana is on the Laksha, and is named after Kalinarayan Roy, the grand father of the present Kumar. It is about half-a-mile from the Arikhola station on the Bhairab-Tangi section of the A. B. Ry.

There are many big Talukdars under the Bhowal Raj. People of this Pargana are comparatively backward in education. The population is composed of followers of different religions and culture and represents different grades of civilisation. The Bhowal people have got a

peculiar intonation in their speech. Dialect of this Pargana differs from that of the other parts of the district. The Bengali, with special vocabulary of this Pargana, is known as Bhowali Bengali or Bhowali dialect in literature. The famous poet Govinda Das, an inhabitant of the Pargana, used this dialect here and there in his immortal works.

The Bhowal Raj-family claim that they originally belonged to the well known "Pushilal Srotiya" Brahmin family of Bajrajogini in Vikrampur. Krishna Narayan Roy is said to be the founder of the Joydebpur Zaminder family. After the death of Krishna Narayan the Zemindery came into the hands of his eldest son Joydev Narayan Roy. After Joydev Narayan's death the estate came into the hands of his son Indra Narayan who was succeeded by Kirtinarayan. On Kirtinarayan's death the zemindary was inherited by Loke Narayan who was again succeeded by his son Golak Narayan. Golak Narayan was succeeded by his son Kali Narayan Roy, afterwards known as Raja Kali Narayan Roy Choudhury. Raja Kali Narayan had three wives of whom Rani Satyavama was the youngest. By her he had a son Rajendra Narayan, later on known as Raja Rajendra Narayan Roy Bahadur and a daughter Kripamoyee Devi. Raja Rajendra Narayan inherited the Estate after the death of his father Raja Kalinarayan Roy. Raja Rajendra Narayan Bahadur married Rani Bilasmoni Devi.

and by her had three sons and three daughters :

(1) Daughter—Indumoyee Devi, married to Babu Govinda Chandra Mukhopadhyaya, M.A., B.L.

(2) Daughter—Jyotirmoyee Devi, married to Babu Jagadish Chandra Mukhopadhyaya.

(3) Son—Ranendra Narayan Roy, married Saraju Bala Devi (in 1900).

(4) Son—Ramendra Narayan Roy, married Bibhavati Devi (in 1902).

(5) Son—Rabindra Narayan Roy, married Ananda Kumari Devi (in 1904).

(6) Daughter—Tarinmoyee Devi, married to Babu Broja Lal Banerjee, M.A., B.L.

After the death of Kūmar Rabindra Narayan Roy his widow Sreejukta Ananda Kumari Devi adopted (in 1919) a son, Kūmar Ram Narayan Roy Choudhury. The said Indumoyee Devi left three sons : (1) Jitendra Mukherjee alias Billu, (2) Kshitindra Mukherjee alias Jabbu, (3) Ditindra Mukherjee alias Tebbu and a daughter Surama Devi alias Keni. The said Jyotirmoyee Devi had a son named Jalad Chandra Mukherjee alias Buddhu (dead) and she has got two daughters : (1) Promode Bala Devi alias Mani, married to Babu Sagar Banerjee, brother of Rai Sahib Jogendra Banerjee; (2) Bibhu Bala Devi alias Heti,

married to Babu Bibhuti Banerjee alias Chandra Shekar Banerjee.

On the death of Raja Rajendra Narayan Roy Bahadur in April 1901 his estate was inherited by his three sons, Kumar Ranendra, Kumar Ramendra and Kumar Rabindra equally. But after the death of Raja Rajendra Narayan Roy Bahadur, the estate was managed for some time by his widow Rani Bilasmoni Devi as trustee for her three sons. Rani Bilasmoni Devi died in the month of January in the year 1907.

During the life time of Rani Bilasmoni Court of Wards once took charge of the estate. But the estate was released as soon as a Civil suit was filed before the Hon'ble High Court. On the death of Rani Bilasmoni the estate was managed by the three Kumars. But after the alleged death of the 2nd Kumar, the charge of his share in the hands of his wife and the share of the 3rd Kumar was taken by the Court of Wards in the year 1911. The Court of Wards took charge of the share of the 1st Kumar in the hands of his widow in 1912. Thus since 1912 the management of the entire estate came into the hands of the Court of Wards. The estate yields an income exceeding Rs. 10,00,000/-.

The Bhowal Raj family is well known for its munificence in the cause of education and other public works. The Rani Bilashmani High School, the Ramendra Nara-

yan Charitable Dispensary, the Ramendra Narayan Atithi-sala (guest house) at Joydebpur, Kaliganj High School and Rabindra Narayan Charitable Dispensary at Kaliganj and the Dispensaries at Kapashia and Mirzapur have been established by Bhowal Raj.

The East Bengal Saraswat Samaj (an institution for the spread of Sanskrit learning in the indigenous system), received a very handsome donation from the Bhowal Raj family in its early stage and the said Samaj is still receiving grants from the said Raj Estate. Besides these, mention may be made of their donations in the old Dacca College (now the Kalinarayan Scholarship of Rs. 40/- per month in present Dacca University), Mitford Hospital, Johnson Hall, Literary Association, East Bengal Brahmin Samaj etc. etc.

Raja Rajendra Narayan Roy Bahadur was a great patron of learning. He helped many poor students, scholars and authors. Rai Kali Prasanna Ghosh Bahadur was for a long time the manager of the estate. He was a great Literator and propagated learning in various ways. He started a Bengali Magazine, 'Bandhab' and wrote many thoughtful essays in that and won the admiration of literary men of the time. "Banga Darshan" of Bankim Chandra Chottopadhyaya only could vie with this. He wrote many Bengali books also.

There is a temple of God Sree Sree Manikya Madhab

at Joydebpur. Madhab Jiu is the presiding deity of Joydebpur town, and the sheba and puja of Sree Sree Madhab Jiu is maintained by the Raj Estate, and people of Joydebpur and other neighbouring places have great reverence for the deity and very often they assemble at Madhab Bari (i.e. the holy temple of God Madhab) and offer their puja.

The said Ramendra Narayan Roy, the 2nd Kumar of Bhowal went to Darjeeling in 1909, for a change with his wife Bibhabati Devi, Brother-in-law, Babu Satyendranath Banerjee and family physician Dr. Ashutosh Das Gupta, private secretary Mukunda Guin and other officers and servants. Kumar and his party resided at the "Step-aside" in Darjeeling during their stay there.

The said second Kumar was alleged to have expired, at Darjeeling after a short illness in May, 1909. After about twelve years of the alleged death of the Kumar in January, 1921, a person in the garb of a sadhu came to Dacca and stayed for sometime on the Buckland Bund (on the bank of the river Buriganga which flows by the South of the Dacca town). In the month of April, he was taken to Kashimpur and from Kashimpur was taken to Joydebpur. During this visit at Joydebpur some suspected him to be the 2nd Kumar of Bhowal. Shadhu stayed for a few days at Joydebpur and left for Chandranath, a holy place in Chittagong. From Chandranath the sadhu came

back to Dacca and again took his abode on the Buckland Bund. During his stay on the Bund this time, he was again taken to Joydebpur by Buddhu Babu, the nephew of the Second Kumar. At this time people's suspicion that he was none but the second kumar grew stronger and they pressed the sadhu to disclose his identity. The sadhu disclosed his identity on the 4th of May, 1921 and declared himself to be Ramendra Narayan Roy, the second Kumar of Bhowal. Many of his relations including the grandmother, Rani Satyavama Devi, the sisters, the nephews, tenants and Talukdars and friends and old acquaintances acknowledged him to be the second Kumar of Bhowal. But the Board of Revenue, Bengal, declared him to be an impostor by an order dated, 3rd June 1921.

After the Kumar's arrival his grandmother, Rani Satyavama Devi died and the Kumar performed her funeral rites and sradh ceremony (obsequial rites). On the 8th of December, 1926 the sadhu Kumar filed a memorial before the Hon'ble Board of Revenue praying for an open enquiry as to his identity and for withdrawal of the order of declaration dated, the 3rd June, 1921 but the Hon'ble Board rejected the said memorial by an order dated 30th March, 1927.

Afterwards the Kumar filed the Title Suit for having himself declared to be the Second Kumar Ramendra Narayan Roy of Bhowal and for permanent injunction and for

confirmation of possession, or in the event of the Court finding that the possession was not with him, for the recovery of possession—i.e. 1/3rd share of the Bhowal Raj. But his wife disowns him and contests.

Other facts relating to the history of the Joydevpur Raj family, Raj Estate and its management, income of the Raj Estate, conditions of tenants and Talukdars, relations of the family, the unfortunate Darjeeling incident regarding the alleged death and cremation of the second Kumar, the party accompanying the kumar at Darjeeling, the return of the party to Joydebpur, the news of the alleged death reaching at Joydebpur, the talk of *Kusa-puttalika*, performance of the Sradh ceremony by his wife at Joydebpur, the rumour that kumar is alive, the advent of the Sadhu at Dacca—his going to Kasimpur and Joydebpur, the disclosure by sadhu of his identity—the declaration by the sadhu that he is the Second Kumar of Bhowal, the mammoth meeting held at Joydebpur, Murder of Mukunda Guin, the death of Rani Satyavama Devi—the grandmother of the kumar, performance of her funeral rites and sradh ceremony by the sadhu Kumar, realisation of rents and Najar by the sadhu Kumar, Board's declaration that the sadhu is an impostor, submitting of the memorial by the sadhu Kumar before the Board, defamation case against Purna Chandra Ghose, the Sreepur Case, Mirzapur case etc., will appear from the elaborate judgment of the learned judge.

·To give a comprehensive idea of the case the copies of the **Plaint** and the **Written Statements** are also appended herewith.

J. M. MITRA

R. C. CHAKRABARTY

CALCUTTA

September 25th, 1936.

1. The above copy of the
2. ...
3. ...
4. ...



MR. PANNALAL BOSE, M. A. B. L.,
Addl. District & Sessions Judge, Dacca.

Heading of Decision in Original Suits

District.....Dacca.

In the Court of Mr. Panna Lal Basu,

First Additional Judge, Dacca.

The 24th day of August, 1936.

T. Suit No. 38 of 1935.

Kumar Ramendra Narayan Roy ... Plaintiff.

AGAINST.

1. Sremati Bibhabati Debi, by Rai Saheb
Upendra Nath Ghose, Manager,
Court of Wards ... *Principal Defendant.*
2. Sarajubala Debi, represented by Rai Saheb
Upendra Nath Ghose, Manager,
Court of Wards
3. Ramnarayan Roy, Minor, Represented by Rai Saheb
Upendra Nath Ghose, Manager,
Court of Wards
4. Ananda Kumari Debi, Represented by Rai Saheb
Upendra Nath Ghose, Manager,
Court of Wards

Proforma Defendants.

The principal question raised in this suit is a question of fact. It respects the identity of an individual. It is not outside judicial experience, nor is the suit unprecedented, but is very extra-ordinary, and its gravity arises

from the magnitude of the property at stake, and from certain personal relations it affects.

The plaintiff describes himself as Kumar Ramendra Narayan Roy, son of Rajah Rajendra Narayan Roy of Jaidebpur claims to be that individual, and prays for a decree declaring that he is the said Kumar Ramendra Narayan Roy, and that he is entitled to an undivided third share in the properties in suit, shortly called the Bhowal Raj. He also prays that his possession over that share which he says exists may be confirmed, or, if the Court finds it does not exist, restored.

The defence is that Kumar Ramendra Narayan Roy is dead, and the plaintiff is an impostor.

It will be necessary to go into the family history in great detail, but a few facts, not in dispute, must be stated at once to appreciate the pleadings, and to indicate the situation in which the present claim comes, and the parties it threatens to hit.

Rajah Rajendra Narayan Roy, the Zamindar of Bhowal, one of the largest landed proprietors of East Bengal died on the 26th April, 1901. The title was personal, but the family was old, and though not entitled to fame, regarded as the premier Hindu Zamindar family of Dacca. The family seat is at Jaidebpur, a village about 20 miles from Dacca, and situate in the middle of the Parganna of Bhowal, a large and fairly compact estate, spreading over the districts of Dacca and Mymensingh. The Rajah had a residence at Dacca, but ordinarily he lived in his family-home and was undoubtedly a local magnate of the highest position and influence. The rent-roll of the estate was Rs. 6,48,353 in 1931. It could not have been much less in Rajah's time.

The Rajah died leaving him surviving, his widow, Rani Bilasmani, and three sons, and three daughters. The sons were, Ranendra Narayan Roy, Ramendra Narayan Roy and Rabindra Narayan Roy. These, mentioned in the order of seniority, were known as Bara Kumar, Mejo Kumar, and Chhoto Kumar. The daughters were Indumoyee, Jyotirmoyee and Tarinmoyee. Indumoyee was the eldest child, Jyotirmoyee the second, then had come the sons, and then the youngest child, Tarinmoyee Debi.

The Rajah had executed before his death a deed of trust and will, and though the exact terms of these are not known, their result, as agreed, was that the estate, upon his death, vested in the Rani, his widow, in trust for the three sons. She managed as trustee till her death which took place on the 21st January 1907. Upon that event the three sons became the owners at law, as they had been in equity; and there is no question that Kumar Ramendra Narayan Roy owned a third share in the estate, and would be owning it still, if he be alive, unless he has been prescribed against for the requisite period, or had renounced the world, and died, in the sense of the Hindu law, a Civil death.

The three Kumars, after the death of their mother, as before, lived as an undivided Hindu Family, joint in mess, property and worship. They had been married before. The eldest Kumar was married in 1900 to Sarajubala Debi, the second defendant in this suit. The 2nd Kumar, Ramendra, was married in 1902 to Bibhabati Debi, the first defendant, and the 3rd Kumar in 1904 to Ananda Kumari Debi, the fourth defendant in this suit. The family lived at Jaidebpur, and the three sisters, all

married, lived as members of the family. Another member of the family was the grand-mother, Rani Satyabhama, who had survived her son, Rajah Rajendra. The Rajah had a sister, Kripamoyee, who survived him, and who was practically a member of the family, though she lived in a separate block with her husband.

In this state of the family arrived the year 1909. On the 18th April of that year, the 2nd Kumar left his home for Darjeeling. He arrived at Darjeeling on the 20th accompanied by his wife, the first defendant and her brother, Babu (now Rai Bahadur) Satyendra Nath Banerjee, and a staff of servants, including clerks, and a doctor. On the 8th May, he is said to have died after a short illness, and his party returned to Jaidebpur on the night of the 11th.

The first defendant, the wife or widow being childless, apparently succeeded to her husband's share in the estate, and then occurred the other deaths. The eldest Kumar died in 1910 when he was about 28. The 3rd Kumar died in 1913 when he was about 27. Their widows, both childless, took each a widow's estate, and have since been in possession of their shares. The 2nd Rani the defdt. No. 1, has also been in possession of Kumar Ramendra's share since his supposed death, except for the alleged possession which the plaintiff claims to have obtained in or after 1921. In 1911 the Court of Wards took charge of the shares of the 2nd Rani, and of the 3rd Kumar who was then living, as disqualified proprietors; and in 1912, it took charge of the share of the first Rani as well. The two Ranis, the 1st and the 2nd, had gone to live in Calcutta before the assumption of these charges, and have lived there since, and have been

receiving from the Court of Wards large sums out of the income of the estate. The third Rani left Dacca almost immediately after her husband's death, but returned, after a period of years, to Dacca, and has settled down at Dacca. In 1919 she adopted a son to her husband, and that son is the 3rd defendant, Ram Narayan Roy. The adoption has, as the result of a contract, left in her a share, instead of altogether divesting her and that share, though outside the charge of the Court of Wards, has continued to be managed by the Court, the rest of the estate being in its charge, so that the position of affairs in 1920, as now, unless the plaintiff's case that he is in possession has made a difference at law, was this : The estate in charge of the Court of Wards ; and the three Ranis, and the adopted son in possession of **their** shares, the Ranis holding - one of them purporting to hold at all events-as Hindu widows, disregarding the anomaly in the third lady's position.

In this state of facts appeared at Dacca, in December 1920 or January 1921 a Sannyasi. He could be found seated day and night facing a burning dhuni, at the same spot, on the Buckland Bund, a public walk on the margin of the river Buriganga, at Dacca, where people promenade morning and evening, for pleasure or health. He looked a Sannyasi, naked, except for a lengti, (loin-cloth) smeared with ashes, wearing a longish beard, and a jata, long, and falling in matted cord-like strands behind his back. That Sannyasi is the Plaintiff.

His case, as made in the plaint, is that he is the 2nd Kumar Ramendra Narayan Roy, the husband of the first defendant, Bibhabati Debi. He says in his pleading

in April 1909 he went to Darjeeling with his wife and a few relations and officers for a change. He got ill, was poisoned during the course of his treatment, became unconscious, taken for dead, and carried to Sasan (burning ground) at night. Storm and rain, however, came with great violence after the body was taken there, and the people who had carried him left him alone at the Sasan, and took shelter elsewhere. When they returned they found the body gone. A few days after this occurrence the plaintiff returned to consciousness, and found himself among Naga Sannyasis who nursed and took care of him, and restored him to some degree of health. He went on living with them, his old memory almost effaced as the result of the poison which had been administered to him, and he wandered from place to place, as one of party of Naga Sannyasis, got accustomed to their life, and indifferent to the world, until in the course of his wandering he arrived, towards the end or 1920 or beginning of 1921, at Dacca, and began to stay on the Buckland Bund in the garb of a Sannyasi.

While staying there, his story goes on, he was recognised or suspected by many as the 2nd Kumar, and afterwards his relations and the local zaminders, convinced that he was the Kumar pressed him to declare his identity. Unable to hide it any longer he disclosed it, and his people induced him to return to worldly affairs, and the tenants accepted him, and commenced paying him rent and nazar. At a great meeting held at Jaidebpur on the 16th May 1921 he was acknowledged as the 2nd Kumar and he started collecting his share of the rents of the estate, but his wife and her brother conspired to induce Mr. Lindsay, the then Collector of Dacca to issue

and publish on the 3rd June 1921, a notice declaring that he is an impostor. On the 8th Decembar 1926 he presented a memorial to the Board of Revenue, but this was rejected on the 30th March 1927. In April 1929, an order under sec. 144 of the Criminal Procedure Code was served upon him described there as Sunder Das alias Bhowal Sannyasi forbidding him to enter 'the jurisdiction of Jaidebpur Thana, and though this order was not made absolute, the plaintiff apprehends that if he went to Jaidebpur there would be interference. He alleges thar he is in possession by receipt of rents, that the defendant No. 1 and on his behalf the Manager of the Court of Wards has been executing illegal certificates against the tenants, but his possession remains.

His wife, prompted by evil counsels and love of gain has been denying his identity, without seeing him at all, and adopting various means to interfere with his possession. The defendant No. 2 the eldest Rani, has personally acknowledged his identity but the Manager of the Court of Wards who is in charge of her share in the estate is hostile, and he infers the same hostility in the defendants No. 3 and 4, although they have expressly said nothing, from their conduct. As to the third defendant, the adopted son of the youngest Rani, the plaintiff does not know whether the adoption was valid, but he is in possession of a portion of the estate, and has therefore been made a party.

This is the case in the plaint that the plaintiff is the 2nd Kumar of Bhowal, and is entitled, as such, to a third share in the estate of which he alleges he is in possession. The prayer originally was for a declaration of his status and for an injunction, but later, a prayer was added for

confirmation of possession or in the event of the Court finding that the possession was not with him, for its recovery.

The defendants, as already indicated, are : 1. Bibhabati Debi, the widow or wife of the 2nd Kumar. 2. Sarajubala Devi, the widow of the eldest Kumar and 3. Ram Narayan Roy, adopted son of the 3rd Kumar 4. Ananda Kumari Debi, the widow of the 3rd Kumar. The first three are the wards of Court of Wards, represented by the Manager of the Estate.

The suit is contested by the defendants 1, 2 and 4. The defendants 1 and 3 have filed one written statement and the defendant No. 4 another. The defendant No. 2, the eldest Rani, does not contest the claim, and has in fact given evidence swearing to the identity of the plaintiff with the 2nd Kumar of Bhowal.

The defence, as I said is that Ramendra died on the 8th May, 1909 at Darjeeling, and that the plaintiff is an impostor.

It is said that he died of an acute attack of biliary colic at about mid-night on the 8th May 1909, and was cremated the next morning.

The plaintiff, it is said, is not in possession nor was he recognised by anybody as the 2nd Kumar. He is not a Bengali at all, and never knew Bengali, and has been set up by "some designing persons" for their own ends. The 4th defendant, the 3rd Rani alleges that the three sisters of Kumars who used to live in the palace as members of the family with the Kumars were turned out by the Court of Wards after their death and these sisters who had litigation with the Court, set up this Punjabi Sannyasi as 2nd Kumar, when they found all their hopes dashed to the ground by the adoption in 1919.

The written statements mention also certain alleged facts which have made the Court of Wards unpopular with the tenantry, and the relations of the Raj family, and indicate portions of the evidence in support of the alleged death of the Kumar who the plaintiff claims to be.

The other points taken will appear from the issues framed by the judge before whom the suit was at that stage. These include the plea that the suit is barred by limitation assuming that the plaintiff is the Kumar, as the defendant No. 1, his wife on that assumption, has been in adverse possession for more than 12 years ; and that, on the plaintiff's own case, he had renounced the world, and had lost the title.

The issues framed were :

1. Has the plaintiff any cause of action ?
2. Is the suit barred by limitation ?
3. Is the suit, as now constituted, barred under Sec. 42 of the Specific Relief Act ?
4. Is the 2nd Kumar Ramendra Narayan Roy alive ?
5. Is the present plaintiff the 2nd Kumar Ramendra Narayan Roy of Bhowal ?
6. Has the suit been properly valued and sufficiently stamped ?
7. Was the plaintiff ever in possession of any part or share of the Bhowal estate, as alleged by him in the plaint ? If not, is the suit maintainable ?
1. Is the plaintiff entitled to the reliefs claimed in the plaint in view of the allegations made in the last part of para 2 of the plaint ?

Issue 1.

The plaint, I find, discloses a cause of action.

Issue 3.

This issue was not argued, and obviously does not arise. The suit is not a declaratory suit. See 42 of the Specific Relief Act does not raise a bar.

Issues 2,6,7,8.

I propose to record a finding on each of these issues after dealing with the issues 4 and 5.

Issues 4 and 5.

The first and foremost question is whether the plaintiff is the 2nd Kumar of Bhowal.

I allowed the issue No. 5 to stand in deference to the suggestion of the contesting defendants that it might stand. The idea underlying the two issues is that the plaintiff must prove that the 2nd Kumar is alive, and that he is the 2nd Kumar. If he can prove that he is the 2nd Kumar, there will be an end of the case, whether the 2nd Kumar be dead or alive, but death will be an answer to the claim. The plaintiff's case goes so near death, and the transactions following the disputed death had, until 1921, been so consistently on the footing that the death was a fact that the onus of proving that the Kumar had not died would, practically speaking, be upon him, but supposing he proves that he is the same man, death is displaced. If you find your friend, for instance alive, and you are making no mistake as to his identity, he is not dead.

The question therefore is whether the plaintiff is the 2nd Kumar of Bhowal.

The issue is short and simple, but the trial began on the 27th November, 1933, continued from day to day,

except for the holidays, and 15 days on which I was otherwise engaged could not sit on account owing to indisposition, or on which some accident such as the illness of a witness occur. The plaintiff has examined 1042 witnesses, and the defendants 433. Either side has put in numerous documents. The witnesses are not merely one vast array swearing to identity, and another vast array swearing to non identity. The defendants put the plaintiff to the proof of everything, as they were entitled to do, adhered to the plea, taken in the defence that the plaintiff has been set up "by a few designing people" and made at the trial the case that the plaintiff has no resemblance whatever to the 2nd Kumar. This last is not the exaggeration of witnesses who deny the identity, but deliberately put by learned counsel to witnesses, as will appear below, and evidence was led to shew that he looks wholly different, though after some wavering, the difference-total dissimilarity—was, generally speaking, limited to the face, and to the features, and to certain points which I will mention below. The plaintiff had to prove the vast mass of facts going to the family history, another vast mass going to the construction of the Kumar, and to the environment in which he lived and moved ; his education ; his habits ; his pursuits ; his traits ; his morals ; his company ; his ailments ; his relations with his wife and sisters, and other connexions ; the kind of home he lived in, the people he mixed with, the clothes he wore, the style he affected, and even the things he used to eat, and the manner in which he ate them. These, necessary in any case, in deciding a question of this kind, became more necessary in view of the kind of cross-examination to which the plaintiff was subjected,

It went most of it, not to the memory of the 2nd Kumar but to his general knowledge ; not to—incidents in his life and family, or to conversations, he had or the people he had met, or known, or any event in his personal experience, but to things he is alleged to have known and their English names. I shall have to examine this cross-examination in detail, and what is stated here is only an indication to shew how far the inquiry was bound to go to ascertain, for instance, whether the Kumar knew the word "cruet". That brought in not merely the question of literacy and knowledge of English, seeing that the plaintiff is absolutely illiterate, except that he can write the signature purporting to be that of the 2nd Kumar in English and Bengali, but brought in the whole question of the style of living, such as might enable one to pick up words like 'cruet' or 'menu' or 'fork' or - lounge suit, or 'miss-in-bulk' and the question as to the sports and pursuits which the Kumar played, and followed, and as to how far he knew not merely the things, but their English names.

Apart from the facts going to the family history and the environment, and the question of literacy, itself a large topic, a great deal of evidence went to the proceedings of the plaintiff since his arrival at Dacca, and the parallel proceedings taken by the defendants, evoked by him. This evidence has disclosed a significant conduct, and has left very little in obscurity. Another mass of evidence went to the Kumar's visit to Darjeeling, and the circumstances connected with his illness, treatment, ~~disputed~~ death and cremation. As yet another mass has gone to the question as to whether the plaintiff is a Hindusthani, or whether he is Mal Singh of Aujla, a village in the

Punjab, who a cowherd in his boyhood, was named Sunder Das after he was initiated into Sannyas, case made at the trial, but not in the pleading. There is some evidence going to the period of the plaintiff's alleged disappearance, assuming he is the Kumar. Experts have been called on either side on the identity of handwriting, on the facts connected with the illness and the disputed death on the possibility of the loss of memory such, as the plaintiff pleads had occurred during his disappearance, 'and on the identity or otherwise, so far as this can be determined from Photographs. Lastly, there is the mass of conflicting direct evidence on the identity, on one side and the other. The defendants who admitted nothing could not complain that evidence was being given, or taken, though afterwards, but not until the plaintiff's case had closed, they did not dispute most of the facts connected with the family history or the life of the Kumar. They even admitted quietly, but unmeritoriously, many facts after they were proved. At one stage of the trial the learned Counsel for defendants was continually asking the Court for an order requiring the plaintiff to close, i. e. refusing to take evidence on disputed points on which the Court could not form, much less express, any opinion. He opposed without locus standi, and without success, the issue of summons to witnesses though the court had no discretion in the matter, so long as the trial went on without interruption. He tried to discuss witnesses, as they stood in court, ready to be put into the box. He talked of estoppel because the learned Counsel for the plaintiff had mentioned a certain date on which he expected to close. It was obvious that the Court could not refuse to examine witness, so long as they were going to

speaking on material points, and so long as what was happening was not an abuse of the process of the Court.

Now it is perfectly clear that the public sympathy is on the side of the plaintiff. One could see that from the crowds that would come to Court, and listen to the proceeding. That is of no avail to the plaintiff. The point will have to be decided on the evidence before the Court, not upon opinion, public or otherwise. This public sympathy for the plaintiff is rather a circumstance against the plaintiff in the sense, that the Court will have to look closely at the evidence of the witnesses who speak to his identity. When, however, it is said that this opinion which Mr. Chaudhury often referred to as the opinion of the mob is itself a circumstance against the plaintiff it is difficult to agree, as though the true Kumar, if he has really returned would excite no enthusiasm, or would be left in the cold shade of neglect. After hearing for two years and a half all about the Kumar one would not expect any one to say now what was suggested at one stage that this youth, the Kumar was a proud cold aristocrat of whom common people could only catch an occasional glimpse and who would excite no enthusiasm. The plaintiff's story reads like romance and what looks like fiction is generally so, but hundreds of people of all ranks and conditions, including all the relations, except six (including the defendants) have sworn to his identity, and these relations include the Kumar's sister, Jyotirmoyee Debi, sister-in-law, the eldest Rani, and even Sarojini Debi, a lady of high position, and the 2nd Rani's own aunt. It is therefore a case in which one must proceed in a spirit of rational inquiry, and try to draw an inference from the evidence adduced.

Turning now to the issue of identity, it will be convenient to mention the Topics which will have to be dealt with and the order in which I propose to deal with them up. The family, the family seat ; the family history down to the supposed death of the 2nd Kumar on the 8th May 1909. The 2nd Kumar, as he was before this date ; his education, habits, pursuits, speech, morals, relations with wife and sisters, except the major topic of literacy and knowledge of English and sports... Page 14-62.

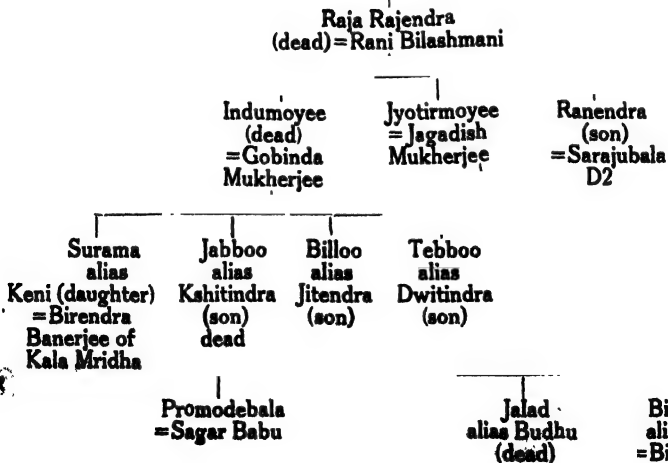
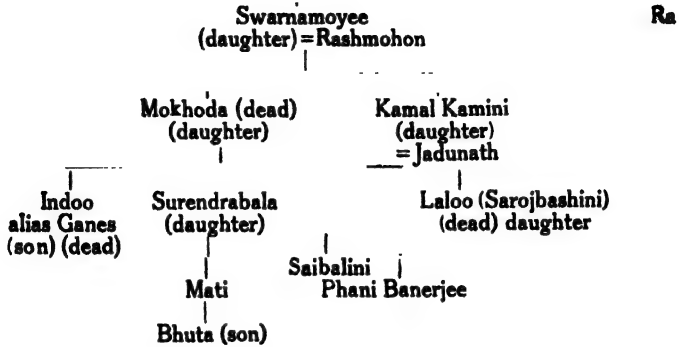
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10. Mind of the plaintiff. " 313-346.
11. Was the Kumar illiterate ? " 346-377
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13. Darjeeling. " 383-489
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15. Conclusion on the issue of identity " 523-525.

of Goluck Chandra, the ancestor, very little has appeared in evidence. His daughter, Swarnamoyee, was a step-sister of Rajah Kali Narayan, and they lived in the family dwelling house, called the Rajbari, although she was married. The family was Brahmin by caste of the sect called *Sotriyas*, and it appears to have been the custom to marry daughters born in the family to indigent Kulins who would consent, to be *gharjamais*. Swarnamoyee's branch of family—she and her two daughters and their children—subsequently removed to another house, but this was in 1300 or 1303, after the birth of the Kumars. Swarnamoyee died in 1917. Kamalkamini, her daughter has deposed for the plaintiff. Her other daughter, Mokhoda is dead. Her son Phani Babu, and daughter, Saibalini have deposed for the defendants. These witnesses were born at the Rajabari and were members of the Raj family until 1300 or 1303, though sometime before that, Swarnamoyee had separated in food and lived in a separate block, Phani Babu was born 26 days after the Chhoto Kumar.

Leaving aside the branch, we turn to Raja Kali Roy. The witnesses who had seen him describe him as a man very fair in complexion with reddish or as one witness *pingala* hair, eyes *katu* or as one witness says, 'not dark' (Vide P. W. 522,529,523,597 631,659,712). One witness, Umanath Ghosal, who is 80, describes his eyes as *pingala* his hair, *pingala*, and complexion very fair. The word *pingala* is a common word in this district, and means brown or brownish, though at one time the learned counsel for the defendants seemed to suggest that the word had been invented for the purposes of this suit, but this controversy came to

GENEALOGICAL TREE

GOLAK CHANDRA ROY.



an end when the defendants' witnesses began to use the word. A photo on record will shew how Rajah Kali Narayan looked (Ex. XXXVIII). He looks a typical Bengalee, shrewd and alert, and there is a point in his body, besides the complexion and the pingala hair, that is suggested to have recurred in the 2nd Kumar.

Rajah Kali Narayan—the title of Rajah was conferred upon him in 1878 by Lord Northbrook himself at the Theatre Hall, called the Pride of East Bengal, at Dacca died in 1285 B. S. (1878).

Rajah Kali Narayan died leaving him surviving two widows Jaimani and Satyabhama Debi, a son, Rajah Rajendra, and a daughter, Kripamoyee. Of the two widows—the Rajah had a third wife, Brahmamoyee, and it is not quite clear what became of her. Jaimani was the elder wife, and Satyabhama the younger, so that the latter was called the Chhotothakurma, and that is how she is referred to in the letters. This lady, or her name, occurs very much in this case. She was the mother of Rajah Rajendra, and the grand-mother of the Kumars. She was alive when the plaintiff came, and they met, and according to the evidence, which I will consider below, she recognised him, came to live with him at Dacca, and died on the 15-12-22 in the same house.

Rajah Rajendra, when he succeeded to the estate, was about twenty-one, seeing that in 1901 when he died he was 44. He had been married before to Rani Bilasmani, a lady then about 14. She was 43 at the time of her death on the 21st January 1907. The lady came of a poor, but a Kulin family of Banaripara, Barisal. Her two sisters and two brothers are living. The two sisters and one of the brothers have deposed for the plaintiff. The

other brother Basanta Bhattacharjee, lives at the Rajbari, as licensee of the Court of Wards. He has not been called by either party. Before his death Rajah Kalinarayan Roy had appointed a manager to the estate, and this gentleman continued manager until sometime after the death of the Rajah Rajendra. He is Rai Kali Prosonno Ghosh Bahadur, a name that has often occurred during the trial. He was a reputed author, more famous than his employer.

The Rajah's children were born on the dates noted below :

1285. probably Kartik	Indumoyee Debi
(Oct-Nov. 1878)	

Bhadra 1287	Jyotirmoyee Debi
(August-September 1880)	

4th Aswin 1289	Kumar Ranendra (Bara Kumar)
(19-9-1882)	

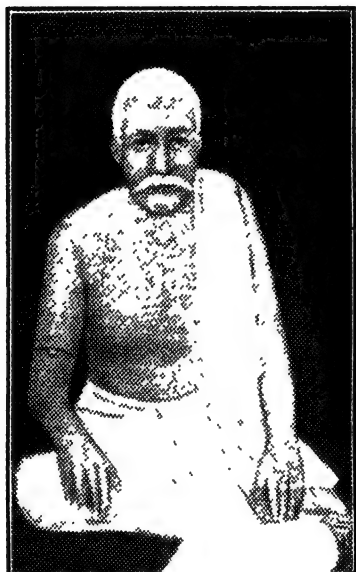
14th Sraban 1293	Kumar Ramendra (2nd Kumar)
(28-7-1884)	

29th Sraban 1293	Kumar Rabindra (3rd Kumar)
(13-8-87)	

1300 (1893)	Tarinmoyee (the youngest daughter)
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These dates have not been disputed, nor any portion of the account hitherto given.

The Rajah lived with his wife and children in the Rajbari at Jaidebpur, a village some 20 miles from Dacca. An account of his home where his children were brought up must be given so that one may pick up the environment in which they grew up, and the style of life they were used to, the education they received, the contents of their memory, the things they knew, and the things they did not know, so that one may judge whether the cross-examina-



**Raja Kali Narayan Roy—The grand father
of the Plaintiff.**

tion to which the plaintiff was subjected was designed to expose an impostor, or to defeat the Kumar.

Jaidebpur is a biggish village about 20 miles, as I said, from Dacca, an hour's journey by rail. There is a map of the village on record, on a fairly large scale, 16 inches to a mile and it occurs also in the one inch scale thana map, also on record. The Rajbari is to the east of the Railway line that cuts through the village, a little over a quarter of a mile off. The Railway Station is nearly half a mile by road. It is necessary to know something of the topography to appreciate some of the events that happened. You come out of Station, get into a road, go along it towards the north and get to the road which one might call the Rajbari Road or the main road of the village. It runs east to west, and you go along it towards the east, a little over a quarter of a mile, till you reach the Rajbari on your left.

The details of the buildings inside the Rajbari will have to be given to appreciate the evidence, but the other details of the village may be first stated. On the east of the Rajbari is a road that runs northwards, takes a turn towards the east, and going north-east meets another road, and the two roads thus united go up to the Sasanbari which is the family burning ground on the river Chillai. At the point where the two roads meet is the Naya bari the house of Swarnamoyee, the home of her daughter's son Phani Bhusan Banerjee, and his nephews. It is a little over half a mile from the Rajbari, and about 120 yards from the Sasanbari. The river Chillai flowing east to west is, to take the nearest point a quarter of a mile north of the Rajbari, and about that point is a Ghat, called the Kalsi Sikdar's Ghat. The river, 50 yards at its broad-

est, is boatable only in the rains. In other seasons boats are pushed with hands or dragged with ropes (D. W. 20 and P. W. 830).

The Rajbari, with its grounds, is about $13\frac{1}{2}$ chains long, and 5 chains broad, a chain being 22 yards. It is a little broader in the middle. In Rajah's time there were ten blocks of buildings, two-storied, without any pretensions to style, but containing numerous rooms, and passages, on either floor, and the block in front which one sees from the Gate was the most imposing. It was called, and is still called, the Bara Dalan. As you enter the gate from the Rajbari road you find, facing you, this Bara Dalan on the other side of a small oval lawn skirted on either side by a carriage drive that goes under the porch. The family did not live at Bara Dalan. It will be necessary to refer to this building again in connection with the plaintiff's cross-examination, European guests paying visits to the Rajbari, generally for a shoot in the forests on Rajah's property, would stay in this house, but it became the Manager's quarters since 1902 when Mr. Meyer was appointed Manager of the Estate after the death of the Rajah.

Behind the Bara Dalan was a courtyard roofed over with corrugated iron above a wooden ceiling. This was the Natmandir where dances and theatricals, and other performances, Jatras or Kabigan, would be held. The witnesses have referred to these as the Gan. On either side of this Natmandir is a two-storied building, with a number of rooms on either floor, provided with balconies where ladies would sit, and see the functioners. On the north of the Natmandir was another two-storied building. In this one of the three rooms below is the

Thakur-ghar where the image of Jagadhatri would be set up annually for worship, and that was the occasion when the gan was held. The other occasion was the **Punyaha** the beginning of the Zemindari year, and the opening of the new books. On this occasion the tenants, high and low will congregate, make payments, and hear the gan. Of the two other rooms one was the green room, and other the idols' stores room. On the top-floor used to be the **Rajah's** sitting room, and certain other rooms.

Behind this building was the **Andar**, or the inner apartments for the ladies. These, now known as the **Puranbari** were a block that still exists. To the west of it was another block, called the **Paschimkhanda** in which **Swarnamoyee**, **Rajah Kalinarayan's** sister, already mentioned, used to live.

Behind the **Rajbari** was and still is, a garden. On the east runs, as I said, a road leading to the river. On the west is a fine **dighi** (tank), about $\frac{1}{5}$ th of a mile long, and 66 yards broad. It runs the whole length of the **Rajbari** and beyond. Ladies could get to the **dighi** by a door opening into the garden on the north, and on its east bank, inside the **bari**, at point some 30 yards to the N. W. of **Baradalan** is the **Madhabbari**—the house of the family gods. The **Madhabbari** faces south, has a small courtyard, walled, with a gate in the south. The principal image residing there is **Madhab**, a stone image, **Tara**, whose house is on the north-west of **Madhabbari**, almost a part of it, but with a yard of its own, opening into the path on the east bank of the **Dighi**. This **Madhabbari** was the scene of a portion of the amazing narrative that is going to follow. Behind the **Madhabbari** is an open compound on the other side of which came to

be built, after the earthquake of 1897, the Rajbilas a modern house hardly, or just completed, when the Rajah died. The family lived in this Rajbilas after the death of the Rajah. Certain points connected with it are in dispute, but into these it is not necessary to go at this stage.

The following sketch, not drawn to scale, will shew the disposition of the buildings to the eye.

- 1 = Bara Dalan
- 2 = Madhabbari
- 3 = Tarabari
- 5 = Nat Mandir
- 6 = Rajbilas
- 7-8 = on either side
of Natmandir
& ther open
space
- 4 = Khajanchi
khana

This is the home in which the Rajah lived, and in which his children were born, and grew up. Appurtenant to this home were numerous establishments, and no end of servants and employees. Inside the Rajbari used to be a private dispensary in a room west of the Natmandir, and to it was attached a doctor. There was, also inside the Rajbari, the Khajanchikhana or the treasury. There was the Faraskhana in one of the rooms on the east of the Natmandir (P. W. 680). Apart from the usual kitchens in the Andar, there was a baburchikhana to the north-east of Baradalan, and at least one non-Hindu cook, Dhananjay, in Rajah's time. That, it is said, was kept, ostensibly, for a European or Anglicised guests.

There was a studio, at first in the outer bari, and later, on the roof of the Puranbari, and in the Natmandir there was a stage for theatricals.

Outside the Rajbari, as you come out by the gate, you face a maidan, or what is locally called a *chatan*, an open space, jungly and uneven in the Rajah's time, and later, cleared and levelled for polo. On the north of it runs the Rajbari road, and on the east and west of it also are roads, and on the south also. It is on this chatan that the great meeting of the 15th May 1921, or the large collection of men, as the defendants would prefer to call it, was held to meet the plaintiff after his arrival at Jaidebpur.

The other establishments appertenant to the Rajbari were :

The Chief or the Manager's Office, just on the east of the Rajbari beyond the road; the Dewankhana on the west, south of the Dighi, and facing the Rajbari Road, which later, in 1905, came to be occupied by the local M.V. School. directly it was raised to the status of a High School, and named Rani Bilasmani School; the School Boarding on its south beyond the road, which boasted a *banda* tank; the stables on a spot south of this which, and a second stable made by the 2nd Kumar, after the Rajah's death, on the south of the Chatan, accommodated some 40 horses, and carriages of all kinds including a silver-mounted carriage; the Jaidebpur Dehi Office at a point of the road on the east of the Chatan; the khas office on the west bank of the Dighi, where used to be the house of Rai Bahadur Kali Prosonna Ghose, the Manager in Rajah's time; the Charitable Dispensary near the Railway Station the Atithsala (guest house) on the other

side of the Railway line on the south of the hat, also on Rajah's property, which sits on Mondays, and Fridays, and where there were the usual shops and hotels, the excise-shop, and the Thana; the idol, Rajrajeswari at Sasanbari the family burning ground; the waterworks on the Rajbari itself, near a couple of trees called Buraburi, which pumped the water from the Dighi into seven tanks on the roof of the Puraubari; the pilkhana which, before the death of the Rajah, used to be at Bourdah, some 2 miles from the Rajbari, but came later to be at a spot south-west of the Chatan. Near the Pilkhana were sheds for the Mahuts, but the pilkhana itself was open bricked land, and in 1904 there were 20 elephants, and in 1909, when the 2nd Kumar went to Darjeeling, some 16 elephants. Each of these elephants was named, and each had a Mahut, and a mate and two grass-cutters. There was also a Tea-Garden, the property of the Rajah, S. E. of the Railway Station in charge of one Mr. Transbery, and a garden some 2 miles off.

These were the principal establishments appurtenant the family-seat, The account given so far has been collected from evidence which there is nothing to rebut, which is undisputed though the defendant had put the plaintiff to the proof of everything and it was only after the account has been fully collected that they produced a map of the buildings on the Rajbari, and put it to the witness No. 977 to get from him the relative situation of some of the rooms. The maps—the top—floor the ground floor have not been proved, except so far as the witness admitted it. These maps are unsigned, bear no dates, made by nobody knows who, and are apparently recent seeing that in these occur later alteration,

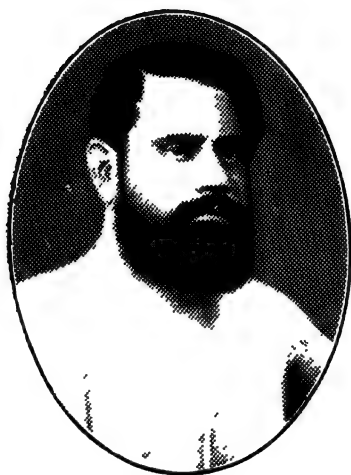
The establishments will indicate the size of the staff at Jaidebpur itself, not counting the staff out in the Muffasil. There were a numerous clerks, servants, guards, orderlies, durwans, gardeners, cooks, staff at the Baradalan, the staff at the Dispensary, the Faraskhana, the offices, musical ostads. the Rajah being very fond of music, pahlwans, soyces, Mahuts, priests, tutors, doctors, and others too numerous to mention. Out in the Muffasil there were 44 dehis, or revenue divisions: each in charge of a Naib a clerk, and sometimes a ticca clerk, and one or more sadaks or peons. There must be still living no end of men who knew the Kumars, and it is from among these that the witnesses, as I shall shew below, have come, and there is no doubt that more might have come if the number had not been limited by consent. Whether they were telling the truth is another matter, but the learned Counsel for the defendants did not, after the whole case was heard, recur to this suggestion during the cross-examination of the tenant witnesses that the Kumar was an invisible or inaccessible aristocrat, hardly seen by the tenantry. To this suggestion I shall return when I consider the direct evidence of the identity.

The family had a residence at Nalgola, Dacca, on the north of the Buriganga, and the Rajah, and after his death, the Kumars, would stay here when they came down as they frequently did. The house north, the river on its back, and nearly opposite the house are a stable, and an Office, called the Mukhtear Office, the law office of the family. On the river used to be a green-boat, and a steam-launch, called the "Matia".. This house has come a great deal into the evidence.

So much about the home where the Kumars were born. It is now necessary to say a few words about their father, and to give the narrative of events till the year 1909 arrived.

Ex, LIV and XXXIX are the two photographs of the Rajah on record. He was not fair in complexion, but darkish, or what is called Shyambarna (P. W. 388, 514, 497, 84). It seems he was darker than even his eldest son, the Bara Kumar.

He wore a beard, and has a grave and dignified look about him. One feature on his body is said to have recurred in his son, the 2nd Kumar—his ears. I will deal with the point, when I come to the topic of the Kumar's body, but it is not enough to say that, except for this detail and another mark nobody suggests any other resemblance. The Rajah, was not what one would call an educated man, though one witness, in deference to his rank, calls him so, but he could meet and mix with Europeans. His daughter, Jyotirmoyee Debi, says that "her father was an educated man, but not very, enough to mix with officials". Looking to some of his letters (Ex. 47 series) he could certainly write English. It would be wrong however to suppose that he was a kind of Englishman, or his home like an English home, or his ways of life were English. In one of the photos he is in bare boby. He was a Hindu and Brahmin, and lived like a Bengali. I have described his home. The Bara Dalan must have been furnished in European style, but in the rest of the house one sees no European style at all. A point has arisen, in view of the plaintiff's ignorance of certain terms, like 'cupboard' or 'side



**Raja Rajendra Narayan Roy—Father
of the Plaintiff.**

board' about the furniture in the Rajbari, and whether the English names of the articles of furniture were known to the household, or to the Kumars. That point will have to be considered in detail, but it is enough to say that the parties do not differ seriously on the actual furniture in the Rajbari, and these were not more than one might find in the house of any fairly substantial Bengalee bhadralok who could not afford to keep a carriage, much less 20 elephants. One sees the usual paraphernalia of an ancient Brahmin Zamindar family, extravagant in servants, wasteful, unmethodical, uneconomical, noisy and barbaric without any real comfort. The Hindu religious ceremonies, the Durga Puja, the Kartik Puja, the Jagadhatrī Pujah, the Basanti Pujah, the Rath in which the Idol Madhab performed his journey from the Madhabbari to a spot near the Pilkhana were held as usual. The ladies lived in Andar, and were purdanussins of the Asuryampasya kind. At Railway stations screens would be put up for them, and they would embark on a steamer in palkis. Even at Darjeeling where purdah is very much relaxed, the 2nd Rani never went out, except something at night, and that in a rickshaw. One sees a photograph of the Chhota Kumar in a bare body. (Ex. a. (17) Bara Kumar appears in bare body in another photo. The daughters were married, all under twelve, to indigent kulins. Children, when their education began under a tutor, would squat on a faras, a box for table, and practise hand writing, to begin with, on plantain leaves (Billoo P. W. 938). The family lived like ordinary Hindu Bhadrals, as the old Dewan Rasik Roy (P. W. 907) Billoo, a son of Indumoyee and Jyotirmoyee Debi and even the 2nd Rani say, and as

the evidence of every witness examined on either side, giving any family detail or incident confirms. It is idle to impart an English air, or impute an English trait to the family, or its ways, because it kept a Baburchi, or because the Rajah, and after his death, the Kumars would put on English clothes when they met Sahebs, or on ceremonial occasions, and occasionally shikar clothes when they went out to shikar, or because, it may be, the Rajah once stayed in an English hotel in Calcutta. When I come to deal with the cross-examination of the plaintiff, and the things sought to be proved to make out the things put to him, it will be necessary to go into details, and to see how far there was in the Knmar any knowledge or traits arising from or bound up with English ways. Fani Babu, Swarnamoyee's grandson (D. W. 92) who as I said, lived in the Rajbari till 1893 or 1895 and who must have been in touch with the family as he insist, so long as the Kumars lived there, says the Rajah, would generally put on European costume, and sometimes Bengalee and that his ways, style, ideas and outlook were European, and the object was to lay a foundation for the case on which the cross-examination of the plaintiff was designed. No witness has been so thoroughly discredited as this Phani Babu, as will appear below, and it may even be said that as a witness he hardly exists ; but the best refutation of what he says is the facts that emerge in the course of narrative that will occur in this judgment and that appeared in countless details at the trial.

Two traits of the Rajah—traits that will have a bearing on the re-construction of the 2nd Kumar. He was a good and even a great Shikari, and he was fond of music. It does not appear that he could

sing, but he could play on tabla very well, and could play a little on Sitar, and clarionet, kept professional musicians, as one collects from Indra Setari (P. W. 449) and Billoo (P. W. 938), and Jyotirmoyee Devi (P. W. 661) the Rajah's grandson and daughter. The Rajah was of intemperate habits and these apparently caused his untimely death at the age of 44.

Before his death the Chief incidents that had occurred in his family were these :

Jytirmoyee Debi, and Indumoyee Debi, the two elder daughters, were married on the 25th or 26th Falgon 1296 (8th or 9th March, 1890). Jyotirmoyee was then a little over nine, and Indumoyee about 2 years elder. Jytirmoyee was married to Jagadish Chandra Mukerjee, a student, but kulin, whose home was at Roail, a village in this district, and Indumoyee to Gobinda Chandra Mukerjee. Neither daughter went to live at her husband's house. Jyotirmoyee became a widow on the 31st Sraban 1307. It is this lady who is the principal figure in this case, and it is the case of the defence that it is her support that has carried the plaintiff so far. The plaintiff has been living at her house, since the date on which he paid his second visit to Jaidebpur, for 37 days at Jaidebpur, and then at Dacca, except for the period he was absent at Calcutta, and there too this lady lived in the same house, though not for the full period. The defence case is that it is she who is prosecuting this suit.

This lady, Jyotirmayee Debi, had, at the time she became a widow, a son, called Jalad, better known as Budhu Babu, and two daughters, Promodbala and Bibhubala, better known as Mani and Heni respectively. Budhu died in 1933, before the trial began.

On the 8th or 9th March 1890 the two daughters of the Rajah were, as I said, married. The next incident of note was the death of Jyotirmoyee's husband, as I said, and the next was the marriage of the eldest Kumar in Falgun 1307 (February or March 1901) was married to Sarajubala Debi, a lady whose father's home was in Calcutta, She is the 2nd defendant in this suit. Bara Kumar was little over 18 at his marriage, and this lady about 12 (Vide Ex. Z 326). Her father, Surendra Lal Matilal was a Vakil of the High Court in Calcutta, and the evidence shews that he was a man of some property, but the marriage took place at the Rajbari at Jaidebpur which is evidence that he did not consider himself a man of equal position. Among equals the bridegroom goes to marry, not the bride. (Vide D.W. 120 Saradindu Babu).

Before this marriage had begun the construction of the Rajbilas after the Earthquake of 1897. It was nearly complete when the Rajah fell ill, went to Dacca, and died at his Nalgola residence in town, on the 26th April 1901. His body was taken to Jaidebpur by special train, and cremated at the Sasanbari on the Chillai.

Rani Bilasmani took charge of the estate as trustee upon the death of the Rajah. The eldest Kumar was then 18 years. 7 months and seven days old. The 2nd Kumar was then 16 years 8 months and 2 days old. The third Kumar was 14 years, 8 months 14 days old, That is to say, they were all boys and Bara Kumar died in 1910 before he had completed his 28th year. In considering the probabilities arising out of situations that will have to be dealt with, their age must be borne in mind, and it must not be supposed that because the Bara Kumar was the Bara Kumar and Karta, he was a man of sixty.

Before the death of their father, there were two tutors, whose supposed duty was to teach them. What education the Kumars received they received at home, except for a disputed period some 15 days or less than a year—at the Collegiate School at Dacca. It is agreed now, after a great deal of attempt, during the examination of the plaintiff's witnesses to prove the contrary that what instruction the Kumars were receiving from their tutors ceased with the Rajah's death, or had ceased at the marriage of the Bara Kumar. This is the evidence of Phani Babu D. W, 92, whom I mentioned, and so far as the 2nd and the 3rd Kumar go this may be taken as agreed, looking to the evidence of Billoo Kumar's nephew examined for the plaintiff, though he says that the Bara Kumar had stopped reading under tutors sometime before 1307.

The tutors were Dwarika Nath Mukerjee and Anukul Babu, and a close examination of the result of their efforts, if any, would be necessary. The case of the plaintiff is that he and the 3rd Kumar did not go beyond the alphabets, English and Bengali, and simple spelling, and all that remained of that education was the ability to write their signatures, and in one case of the plaintiff, as it transpired at the trial, even the knowledge of the letters composing the English signature, with the arguable exception of the letter N, is, assuming he is the Kumar, gone. The case of the defendants, was put by learned Counsel to Mr. S. Ghosal, Bar-at-law who swore to the identity of the plaintiff during his examination on commission. Mr. Ghosal deposed that he had met the Kumar in Calcutta in 1904 or 1905 and found him in

manner and conversation just like a man of his position. Mr. Chaudhury put his case thus.

“That is to say, you found him to be a well-educated, well—polished young Bengalee aristocrat ?” In the course of the trial this was toned down, as it will appear, when I come to deal with the question of literacy, which in view of its extreme importance must be dealt with separately, and not in the middle of the present narrative, but the defendants have adhered to the case that the 2nd Kumar could read and write Bengali and English, and could carry on conversation in English. If the Kumar could do so, and if his literacy had reached a point from which there could be no lapse to illiteracy, the plaintiff is not the Kumar. On the other hand if he did not know English, and if he, though ignorant of English, could not be supposed to have picked up certain English words put in cross-examination, he will steer clear of most of the cross-examination as over his head, assuming that he is the Kumar himself.

It is enough to say at this stage that the Kumars' education, such as they were receiving, ceased in 1307 before the death of the father when they were boys, and unless another tutor, Mr. Wharton, appointed to teach them colloquial English, could do anything for them, their education ceased altogether with the father's death. After that event, things began to happen. Some time before September 1901, but shortly before, one Mr. Wharton was appointed to teach them colloquial English. Thereafter, in September or thereabouts, Rani Bilasmani dismissed Rai Bahadur Kali Prosonnno Ghosh, the Manager. He had been, as I said, the

Manager from the time of the Rajah Kalinarayan Roy, and the date of his dismissal, as I gave it, has not been disputed, and occurs in the evidence of his son, Rai Bahadur Saroda Prosonno Ghosh, now a District Magistrate in Bengal, who has deposed on commission for the defendants. Mr. Wharton resigned on the 31st July, 1902. In his resignation letter dated, the 25th July, 1902 he says :—Dear Madam,

“I regret to be obliged to send in my resignation of your service from the 1st August next, but after the manner in which I have been treated since I entered your service, you will probably not be surprised to hear of my intention, this being the only possible course left to me as a gentleman.”

“I would remind you, in the first, that when I was asked by the Divisional Commissioner and Mr. Garth to accept service under you, I was given distinctly to understand that your three boys would be entirely under my care, and that I should have full control of their work and general daily habits, and I was also told that I should be under the immediate orders of Rai Kali Prosonno Ghosh Bahadur as your Manager. It was upon these terms that you accepted my appointment. As you know, shortly after I joined you discharged the Rai Bahadur from your service, and it was only at Mr. Savage’s request that I agreed to remain in charge of the boys in the hope that I might be able to induce them to attend to their studies, and to learn how to behave as gentlemen under my tuition. It was also at the request of the Divisional Commissioner that I agreed to take over the management of your stables in order to improve, if possible, the wretched condition in which your horses and carriages were always kept, and I took over this work on the distinct understanding that I should be paid Rs. 900/- per month for the general up keep of the stables.”

“Not only have your sons neglected their studies in every possible way, but they have in no way attempted to reform their deplorably bad habits, and it is quite evident to me that they have no intention whatever of

taking my advice or of accepting my tuition." The rest of the letter refers to dues on account of salary and so forth. It is therefore perfectly clear that Mr. Wharton was appointed after the Rajah's death, and that, by the Rani, though the defendants before this letter was proved were suggesting that the Rajah had employed him to teach the Kumar colloquial English. The witness to whom this was put (P. W. 35) adds that the Saheb was appointed by the Rani or the Bara Kumar but instead of teaching the Kumars, he supervised the pilkhana and the like, which looking to Mr. Wharton's letter, and the other evidence on the point, including chits shewing his supervision of the stables, (See Ex. 16 to 16 (10)) seems to be the truth.

Rai Bahadur Kali Prosonno Ghosh was dismissed in about September 1901, and this was followed by a suit against him for account. In his place was appointed Babu Surendralal Motilal as Manager, and he continued Manager till November 1902 when Mr. Meyer was appointed Manager. Mr. Matilal was Bara Kumar's brother-in-law.

In the mean time the 2nd Kumar was married in Jaista 1309, on the 6th Jaista, according to the telegram, and the letter sent to Defendant No. 1's mother's people fixing the date of marriage, (Ex. 299 and 297), she herself gave the date as the 17th Jaista, but asked in cross-examination whether it would be correct to say that the date was the 8th, she says, she cannot deny it, as the 17th was her impression and thereafter the telegram and the letter, one by Rani Jaimani, and the other from Rani Bilasmani were shewn to her and she did not dispute them, or the date, the 8th Asar, and made certain answers which shewed that the 17th was not the date which she really recollected. It is somewhat odd that she should forget her wedding day, and it evoked the comment that she was putting her marriage a little forward to contradict her aunt, Sarojini Debi who had come with the bridal party, and stayed at Jaidebpur for some 22 days, according to her evidence. It is not as if she had seen the 2nd Kumar only then, so that how many days she stayed on this occasion is not very material, but there is no reason to doubt her statement that she stayed on this.

occasion for some 22 days. In the case of the defendant No. 1 also, the bridegroom did not go to her house, but she had to come, after the date of marriage was fixed, and with her came her maternal uncle, Protap Narayan Roy, his wife, Sarojini Debi aforesaid (P. W. 1026) her own mother, Fulkumari Debi, brother, Satyendra, and some servants. She was about 13 at her marriage, and her brother, Satyendra, who will figure very much in this case, and also in one portion of the narrative, was then about 17 i. e. about a year younger than the 2nd Kumar. This gentleman is now rich, and the case of the plaintiff is that it is he who is really enjoying a third share in the Bhowal estate, though the sister is the nominal owner, and that it is he who is contesting the suit, and the sister has, so far as her brother is concerned, no will of her own, and that neither would look upon the advent of the Kumar otherwise than a calamity.

A few words about the lady's family—the family she comes of might be given at once to appreciate the evidence that will have to be considered. She is one of four children of her mother, Fulkumari, who was the daughter of Babu Nabakristo Mukerjee, who belonged to the well-known Zaminder family of Uttarpara in the district of Hughly. Her father, Bishnu Pada Banerjee, belonged to a village called Noapara in the same district. He died when she was about six, and there is no doubt whatever that her mother with her children lived all her life until 1909 at the house of her brother, Protap Narayan, and later, at the house of another brother Ram Narayan. The 1st defendant says that mother and her children came to live with her brother after she became a widow, and her brother, Satyendra says that too, and suggests that his father was a man of some property. It is perfectly clear that he was nothing of the kind, or she would live at her husband's house which she never did, not even during her coverture, seeing that the education of Satya began—he was put into school, he admits so far at Uttarpara. Shyampada Banerjee whose mother is a cousin of his mother, and who has been examined on commission for the defence had seen Fulkumari live at her brother's all his life, and talks of her sometimes going to see her husband

but of this he admits he has no personal knowledge. The wife of a man of property does not live all her life in her brother's house, obviously as a dependant, for the evidence of Satyendra that his father left the property, anything to speak of, is unsupported by anything else, and obviously her say, and though it appears that his mother, when she died, left him some money, it will have to be seen whether it was not her saving out of the income which her daughter had begun receiving from the estate. In one of her letters dated 1-12-08 she was complaining that her son was wasting time at Jaidebpur and asking how he expected to make his living, if he neglected his studies, (Ex. 293 (6)), but the true position otherwise appearing, shews it was literally true.

The defendant No. I is one of his family of four children brought up at the house of their maternal uncles. Satyendra Babu was the only brother; the other there were daughters. Malina, married to the son of Kali Chandra Mukherjee, who was Prime Minister of Jaypur; Bibhabati, married to the 2nd Kumar and Probbabati, married to Susil, a son of Umakali Mukerjee, a Vakil of the High Court. There is no doubt that their maternal uncles were men of high position, and to this fact and their own kulinism and to the beauty of the girls must be attributed these connections. In a certain petition which the defendants presented to the Board of Revenue objecting to the assumption of charge over her share of Estate, she described herself as belonging to the Mukerjee family of Uttarpara, as one reason why she should be thought competent to manage. She did not mention her father.

Of her three maternal uncles it was Protap Narayan the eldest, who came with the bride, as I said, and her aunt, Protap's wife and her brother, Satya, then a student. The marriage took place. The bridal party left, and she stayed on. Mr. Surendra Matilal was then Manager, as I said—it was May 1902 and the Rani the mother-in-law was living, and was the mistress of the house, but in a limited way, seeing that her mother-in-law Rani Satyabhama Debi and her co-wife Jaimani Debi, were living too.

About a month after her marriage she the 2nd Rani went to Calcutta, on her own account, with Baia Kumar,

Rani Satyabhama and Jaimini and Kripamoyee, and thence went to her mother's home at Uttarpara, lived there for about three weeks, and then returned to Jaidebpur, spending a week at Calcutta on her way home. That on her account, would be about the 7th Sraban. On the 10-3-1902 the 2nd Kumar is said to have written to her a letter in Bengalee and this is one of the letters nine in all, which the 2nd Kumar, according to her, had written to her with the exception of one written to her sister Probbabati. These letters, z (142) to z (142) (7) and z (143), referred to at one stage as x7 to x15, have been impugned by the plaintiff as faked with a view to establish the literacy which the 2nd Kumar never possessed. This question will be considered under the head-"Literacy" of the Kumar.

After returning to Jaidebpur the 1st defendant, whom I propose to refer to as the 2nd Rani lived on at Jaidebpur till Aswin 1311 (October 1904). During this period certain events happened. In November 1902 Mr. Meyer who has deposed in this case on commission for the defendants was appointed Manager (Ex. 283). In Aswin 1309 (September-October) a son had been born to Bara Kumar who died in three months, and in a letter of the 2nd Rani's mother is dated the Pous 1309 (December 1902) she conveys her condolence. This child was known as Jockey, and there is a school at Jaidebpur called, after him, Jockey Primary School.

In January 1903 the eldest Kumar attended the Delhi Durbar (Vide Mr. N. Guin examined on commission) and after that there was talk, so says Mr. Meyer, of his being made a Rajah. On the 10th Magh 1310 (24th January 1904) took place on the same day the marriage of Chhoto Kumar and the youngest sister Tarinmoyee, shortly called Mator. Chhoto Kumar was married to Ananda Kumari the 4th defendant. She was little over thirteen then and came of an indigent family belonging to Haria, a village in this district. Of the three Ranis, she is the only Dacca girl; of the other two Ranis one was a Calcutta girl, and the other as good as a Calcutta girl, Uttarpara being a few miles from Calcutta. Mator, the youngest daughter

was married to Babu Brojolal Banerjee, who is now a pleader of Dacca. He however was only a half-ghur-jamai, seeing that he would be generally away, though latterly, his wife Mator, came to live with him at Dacca where he began to practise as a pleader, on the 10th Falgun 1910 (22-2-04) was married Mani, (Indumayee's daughter) to Sagar (P. W. 977).

In the beginning of 1904 therefore the family consisted of the three Kumars, their sister, the children and the husbands of the two elder sisters, the two grand mothers, Rani Satyabhama and Jaimini; and in the eastern block lived Kripamoyee, the Rajah's sister, with her husband Bilas Babu, a man of Faridpur District who had another wife, and children by that wife of whom two have deposed for the plaintiff. It will be necessary to mention them when I deal with the evidence. Kripamoyee had no children. Two things had been added to the Rajbari establishments after the death of the Rajah. The 2nd Kumār set up a new stable on the south of the chatan, as I have said, brought the Pilkhana nearer home, as already said, and opened a menagerie, or *chiriakhana* which could boast two tigers, two leopards, and a lot of other animals of which one, a white fox, mentioned by the plaintiff consumed some time in this case. Whoever saw the 2nd Kumar at the *chiriakhana* is not discredited as seems to have been the point by the fact that he saw this white fox, because a witness for the defendant had seen the thing too. (D 267)

In 1904 nothing material to this narrative seems to have happened until June arrived. On the 15th June 1904 Mr. Meyer sent up a report to the Collector of Dacca (Ex. 284). In this report Mr. Meyer, a private servant of the Rani, the mother of the Kumars complains of interference by his employer with the management of the estate, alleges that she has been wasting money, and doing things prejudicial to the estate. He has a good word for the Bara Kumar who purports to certify the accuracy of the report, but gives a picture of the two



Rani Bilashmani Devi—The mother
of the Plaintiff.

younger Kumars so different from the Kumar which the defendants were trying to construct, that Mr. Meyer though he admits having made a report, would not admit the copy which the plaintiff was trying to prove, as the original called from the Collectorate was not produced. The report was however proved by Mr. Rankin who was then Collector of Dacca, and to whom it had been sent and he, examined as a witness for the defence, had every reason to remember it, considering what it led to. In the matter of this report Mr. Meyer and the Bara Kumar were on one side and the Rani and her two younger sons on the other, as the evidence of Mr. Rankin and of Jamini P.W. 34, a clerk under Mr. Meyer whom Mr. Meyer still remembers, The Rani dismissed Mr. Meyer in September 1904. Mr. Meyer and Bara Kumar, and this clerk, Jamini, proceeded to Darjeeling armed with a letter from Nawab Salimulla of Dacca, and Mr. Rankin had already taken action on Mr. Meyer's report—that is what he presumes—and the result, as to which there is no dispute, is that the Board of Revenue made an order that the estate should pass into its charge, but instead of appointing Mr. Meyer as Manager, the Board appointed one Mr. Heard. On a day in October Mr. Rankin and Mr. Milligan, then an Asst. Magistrate, proceeded to Jaidebpur to take possession of the Estate and although it was no business of Mr. Meyer he went too. The whole thing was sprung upon the Rani it was intended to be a surprise Mr. Meyer says. Mr. Rankin wanted to take possession of the Estate and also the Palace, gave the Rani ten minutes time to put the ladies into one room in order that he might enter, and make a search for papers, and took Mr. Meyer in to shew him the papers, though Mr. Meyer as Mr. Rankin says in effect, did not know where they were. Mr. Meyer was there to gloat over his employer who had ventured to dismiss him, and considering that the memory of those days must have been very bitter it is odd that Mr. Meyer remembers less than one would expect, less than even Mr. Rankin, although the transactions, before and after the matter, shew that Bara Kumar had got wholly under his control; and that the 2nd and the 3rd Kumars had sided with the Rani in this quarrel as Mr. Rankin admits and

must have been very bitter against Mr. Meyer as his own evidence, where it is frank, indicates.

The 2nd Kumar was not at Jaidebpur when Mr. Rankin took possession, but had gone to Calcutta, apparently to be with officers sent out to check-mate the intrigues of Mr. Meyer and Bara Kumar to bring in the Court of Wards. On this occasion he stayed at a house in Park Street, and while he was staying there the Estate went under the Court of Wards. The 2nd Rani was at Jaidebpur then, but she went later, with Rani Satyabhama, and her brother who had come to Jaidebpur, and a brother of Chhoto Rani to the house in Park Street where the 2nd Kumar was staying. This was in Aswin 1311, as she says, and she adds that the Rani came to Calcutta about a month after, (and Chhoto Kumar still later, according to other uncontradicted evidence) and occupied, as this house was small, No. 3 Wellington Square. Here the family, the Rani and her daughters, and the three Kumars, and the three Ranis lived till a date in March 1904. Upon her arrival in Calcutta she instituted a suit in the High Court claiming possession of the Estate as against the Court of Wards which had proceeded on the footing as though she had no estate, and upon this suit being filed, the Court released the estate in March 1905. During this period the Bara Kumar seems to have lived in a house in Mott's Lane (P. W. 977 Sagar Babu), but his wife with the rest of the family at 3, Wellington Square.

Evidence, touching the movements, or rather the escapades, of the 2nd Kumar during this period, and the persons he came into contact with at this time will have to be mentioned later, but it is enough to say, at this stage, that the family including Bara Kumar returned to Jaidebpur before the 23-3-1905, seeing that the Bara Kumar wrote a letter on that date from Jaidebpur (Ex. 335), but the 2nd Kumar seems to have stayed on for a few days more, and during these days took place a transaction of extreme importance in this case. On the 25th March 1905 the 2nd Kumar signed an Insurance proposal, and on the 2nd April 1905 he was medically

examined by the Insurance doctor, Mr. Arnold Caddy, in Harrington Street. This medical report records, as it usually does, certain details of his family, and his date of birth and among other things certain features of his body, including certain marks. It will have to be seen whether these fit the plaintiff and how far they carry him towards identity but it is worthy of note that of the Insurance papers defendants called for, and produced, the affidavits of death sworn when the Policy, which was for Rs 30,000, was paid upon the disputed death of the 2nd Kumar, but not this medical report, although as I shall shew below it had been called for by the Board of Revenue on the 10th May, six days after the plaintiff had declared that he was the 2nd Kumar, and seen by the Board on the 15th July 1921. It was at the instance of the plaintiff that the document was called for from the office of the Insurance Company at Edinburgh, and produced in Court in December 1934 when most of the identifying witnesses had been examined, and the 977th witness the plaintiff was in the box.

When the family was in Calcutta the Rani engaged two Officers one of whom has played a very prominent part in this story. He is Babu, now Rai Saheb, Jogendra Nath Banerjee. He was employed, so he says, as Secretary to the three Kumars, but whether he was so employed from the beginning or not, he came to have the designation 'Secretary, Bhowal Raj.' He is a brother to Babu Satinath Banerjee, better known as Sagar Babu, who is a son-in-law of Jyotirmoyee Debi. The latter had married Promodbala (also called Mani) in Falgun 1310, and it was on this occasion that Jogen Babu first came to Jaidebpur as he says, but he was employed, and came to live permanently at Jaidebpur, in or about March 1905. The other officer appointed at this time, also at Calcutta, is Rai Bahadur Joges Chandra Maitra, a retired District Judge. He was appointed Manager of the Estate. This gentleman appointed one Binod Babu of Calcutta to teach the Kumars English, but he could not

get the Kumars to come to him and it is agreed now, though there was at one time a faint attempt to attribute to him a portion of the Kumars' literacy or learning, that this tutor taught them nothing. It is agreed that except for Mr. Wharton, assuming he could do anything, there was no teaching by anybody after the death of the Rajah. Binod Babu was put into the Minor School, and when this was raised to the High School on 9/11/05 he became its first Headmaster (D. W. 14).

The year 1905, the rest of it—passed without incident, until December, when on a disputed date the Kumars admittedly went to Calcutta. The exact period of his stay in Calcutta will have an important bearing on the question as to the genuineness of the nine letters attributed by the defence to the 2nd Kumar, but impugned by the plaintiff as forgeries, and on the truth of the testimony of Mr. R. C. Sen, Bar-at-law who has deposed for the defendants. All that is necessary to say now is that it is admitted that the Kumars, all of them, and the 2nd Kumar, certainly, paid a visit to Calcutta in December 1905. On this occasion they put up curiously at 19, Landsdown Road, a property since acquired and improved by 2nd Rani's brother, with money which, according to her, had come from her pocket. During this visit His Royal Highness the Prince of Wales, as he then was, arrived in Calcutta on the 2nd January. The 2nd and 3rd January were public holidays in honour of this visit, and the house, according to a witness, examined by the defence, was decorated on the occasion (D. W. 396 Gour Chandra Mazumder).

The Kumars, or the 2nd Kumar at all events, were certainly in Calcutta on the 4th January 1906, looking

to a letter he signed there on that date (Ex. 470 a letter filed by the defendants). They returned to Jaidebpnr, when exactly it is not possible to fix. On the 25/12/06 one finds a portion of the family at Calcutta. Indumoyee, the eldest sister of the Kumar, the 2nd Rani, the Bara Kumar, a lot of other people, some sixty five in number, had arrived on that date, looking to the letter of Indumoyee to the Rani bearing date the 15th Pous, or 30/12/06 (Ex. 236). It was the year of the Congress, and the Exhibition in Calcutta, as the other evidence shews, and the party had come to Calcutta, and was staying at a rented house, No. 153 Dhurumtola Street, the house of the Late Mr. A. M. Bose, as the evidence is. They had come as the 2nd Rani was ill, suffering from anaemia, and suspected blood-poisoning. The 2nd Rani has described this visit, and there are three letters of her mother touching this period (Ex. 302, 304, 305). It appears from one of these that Rani Bilasmani had not arrived in Calcutta even on the 7th January 1907 and that, on this date, the 2nd Kumar was being expected in Calcutta, but had not arrived. She did arrive after this date—it looks as if she had arrived on the 9th with the 2nd Kumar, but the point will have to be examined in connection with one of the disputed nine letters I mentioned. The Rani Bilasmani did at all events arrive, and a lot of other ladies and relations came or had come too, with a view to bathe in The Ganges on the Ardhoday Jog which fell on the 14th January 1907. On the 19th the Rani had an attack of Cholera, and died on the 21st. This account has been collected from the evidence of the 2nd Rani and from Jyotirmoyee, and has not been disputed. There is no reason to doubt the evidence that

the party on this occasion included the three sons, the three daughters, the husbands of the two elder daughters, Kripamoyee, Satyabhama, Kripamoyee's husband, Sonamani, a sister of the Rani, who has deposed in this case, and the wife of Basanta Mukerjee, her brother. They all lived at 153 Dhurumtola Road, but Bara Kumar lived in a separate house in the Same street, though not his wife.

On the 22nd January 1907, the day following the death of the Rani, the party returned home. The Kumars had become full proprietors. Rai Bahadur Joges continued as Manager till about September or October 1907, and then resigned (P.W. 952, his clerk). On the 16th October Mr. Gyan Sankar Sen, a Deputy Magistrate was appointed Manager of the Estate. One finds the date in the History of the services of Gazetted Officers published by Government. In this year the Kumars did not go to Calcutta, and the only event that might be mentioned is that Heni, the daughter of Jyotirmoyee, and Keni, the daughter of Indumoyee, were married in Falgun. Keni, married to one Birendra Banerjee of Kalamridha, became a widow in Bhadra 1326. Heni was married to Babu Chandra Sekhar Banerjee who is now a pleader at Dacca, and who has deposed in this case. He is a first cousin of Sagor Babu, the other son-in-law being a brother of Rai Saehb Jogendra Babu whom I have already mentioned. These three belong to a village in Pabna.

It is not known why the Kumars did not go to Calcutta in 1907, but the 2nd Kumar, though going about as usual, was suffering from syphilis. It is admitted that he had syphilis before his disputed death. It is a fairly large topic which I propose to deal with when I

come to the question of the marks on the Kumar's body, but it is agreed that he had syphilis, and it broke into gummatous ulcers—not irruptions but ulcers—about his elbows and on his legs. He went to Calcutta in December 1908 for treatment of these at all events. When exactly the infection occurred it will be possible to determine within narrow limits when I come to deal with the topic. The plaintiff says he had it 3 or 4 years before he went to Darjeeling. Phani Babu, D.W. 92, who ought to know it, and was called to speak to it would place it three years before the Kumar went to Darjeeling. Dr. Ashutosh Das Gupta, the family Doctor, who went to Darjeeling, and has deposed to it, and its treatment found him suffering from it in 1907—the year he indicates—when he was appointed asst. family doctor. He does not know when it began. The defendant's case is that at this time the 2nd Kumar was having occasional fever, and attacks of biliary colic. It has been denied on the side of the plaintiff—to the plaintiff these were not put that there was anything of the matter with him in 1907 or till his supposed death, except this syphilis ; and his case is that the fever is an invention to explain a prescription written and signed by Dr. Ashutosh during his illness at Darjeeling—a prescription which every body as will appear below—disclaims ; and the biliary colic, another invention to explain what would otherwise appear a sudden unexpected and inexplicable death. The matter will be dealt with under the topic of his disputed death, but in 1907 whether he had syphilis alone or the other two as well, he did not look or behave, like an invalid. He was going on shikar, no difference occurred to his pursuits which I shall mention below, he

was driving about, riding about, going out to shoot, coming to Dacca, and it was in this year that he ran a tom-tom race at Dacca with Nawab Salimulla for a stake of Rs. 1000- which he won (P. W. 676, 813). The defendants have themselves led evidence to shew that until a few days before his death he appeared to strangers as a man "full of health." In 1908 things began to happen, but to appreciate them and what followed I must give an account of the family as it now was, and of the Kumars, and their habits and pursuits and their morals. The family at this point of time consisted of the three Kumars and their wives and the three sisters and the children of the first two, besides Satyabhama, the grandmother. There was besides the aunt, Kripa-moyee who lived in the next block with her husband. The daughters of the sisters had been all married. Govindo Babu, the husband of Indumoyee was living in the house. He was an M. A., B. L. but a recluse mixing with nobody. The first floor of the Rajbilas was the *Andar* where the ladies lived, and slept, and so strict was the *purdah* that even servants, unless they were small boys, could not go upstairs. Although the Kumars were the Maliks, the mistress in the *Andar* was the eldest sister Indumoyee just as the Rani, the mother, was before. It appears from certain letters of the Chhoto Rani that she was looked upon as mother-in-law (Ex. 320 to 329). Even in 1909 she, writing from Dacca, was asking her to get her taken home (Ex. 327). It was customary for all *muzar* to go to the ladies. She used to keep it (Ex. 337). She used to keep a key of the *amnatkhana* or the room in the *Andar* in which valuables were kept. It was she who would get the ornaments made

for the 'bows', (wives of the Kumars), and arrange for payment by the estate (Ex. 324). The Kumars, it seems, were fond of their sisters, (Vide Ex. 69 & 71 letters of Bara Kumar) and every thing shews that she was the mistress in the Andar, and the evidence that she was so has not been shaken by anything said by the Ranis who have deposed.

The Kumars themselves, each of them lived what Mr. Meyer examined for the defendants, calls a "dissolute life". In 1904 when he was reporting against his employer, the Rani, to the Collector he, after stating that the Bara Kumar was a good sort, thus speaks about the 2nd and the 3rd Kumars :

"As regards the two younger Kumars you yourself know that it is impossible to do anything with them. They are constantly surrounded by low companions who simply get them to commit all sorts of follies". The two younger Kumars, says he, are helpless as far as business is concerned. They have had next to no education." In his evidence Mr. Meyer who was, as I said Manager from November 1902 to a date in September 1904 says that Bara Kumar used to drink heavily and "womanise" and he must have begun very early, seeing that in 1902 Mr. Meyer had him examined in Calcutta, as he expected his life was going to be short, with a view to a Will ; and as regards the 2nd and the 3rd Kumars, he says they were exactly alike in the matter of wine and women, though it is admitted in this suit that neither drank. It is agreed on all hands that their morals were bad, and the 2nd Kumar's worse than mere syphilis indicates. Rai Bahadur S. P. Ghose, who is son of the old Manager, Rai Bahadur K. P. Ghose and who had lived at

Jaidebpur till 1901, i. e. till after the Raja's death says : The 2nd Kumar had some little education before his father died, and after that event he grew very wild". At the death of his father he was less than 18, but went bad, and, as his maternal uncle, Kedareswar (P. W. 33) says, it continued bad after his marriage in May 1902. In October 1902 he was keeping a mistress, Elokeshi, in a room in the Rajbari itself. This was very much disputed, but came to be indisputable. In 1903 Rai Saheb Ananda Ganguli, a retired Assistant Surgeon, then posted in the Dacca Jail paid a professional visit to this woman at a house in Begumgunge near the jail, and met the 2nd Kumar there nursing the woman. The suggestion was that the woman was a fiction. Jadab Basak (P. W. 920) followed, and said that the 2nd Kumar and Fani Babu (D. W. 92) met in a brothel in Magh 1310 (Jan. Feb 1903) This lad come on the *dol* day to meet his mistress, Kusum and listen to music, and in return, the 2nd Kumar invited him to the house of his mistress, Elokeshi at Begumbazar. The case that she was a fiction continued. A photo of Elokeshi was produced. The case remained. She herself was produced. The case persisted she was a fiction. At last a witness for the defendants admitted that this Elokeshi came to a nautch at the Rajbari to sing and dance, and then Fani Babu, (D. W. 92), admitted her too, but denied that she was kept as a mistress at Rajbari or that the 2nd Kumar, much less he could go to a brothel. In a book which this Phani Babu had prepared, or which was prepared for him as a kind of lesson-book with a view to his giving his evidence, he had entered Elokeshi as one of the "kept mistresses" of the 2nd Kumar. The evidence of this

woman is that she went to sing and dance on the occasion of the birth of the Bara Kumar's son—he was born in October 1902, that the 2nd Kumar detained her, and kept her in a room in the first floor of the block east of the Nautch ghar, the room called *hoor khana* of that block and one day, she was discovered in 1903 she indicates that by calling it sometime before Chhoto Kumar's marriage and then she was brought to Dacca, and kept first at Begumbazar, and then at another house at Chandmari, and to that house the 2nd Kumar would be seen going on foot (Vide evidence of Nalini Babu, a pleader). This account is important in view of a certain identifying mark to which I shall allude, but it is enough to shew that the young man, then barely 18 had gone wrong, and wild before marriage, and begun to keep a mistress, soon after it—if this woman was his first mistress. During 1903, to June 1904 and June 1905 to the end of 1905, except for the period he was visiting Calcutta, he was going out in boats with bazar women. His companions in these pleasure trips were Mr. N. Nag (P. W. 459) and Rajendra Roy (P. W. 792) a grave elderly man, almost a millionaire of Dacca. These gentlemen, had to disclose these escapades to explain how they came to know the Kumar. In Calcutta the 2nd and the 3rd Kumars had their 'good time' in this manner. In April 1905 he borrowed Rs. 10,000 and paid most of it to a woman, Malkajan. (P. W. 89, M1. G. C. Sen who was the Life Insurance agent and who arranged the loan, and attested the promissory note (Ex z 199). He would scarcely come home, and the 3rd Kumar was almost as bad (Ex 67) and on the 23rd March 1905 the Bara Kumar who had come home from Calcutta was writing to Jogendra Babu, the Secretary, asking him to keep an eye

on the 2nd Kumar, as he feared that he was going to bring 'somebody', evidently a woman to Jaidebpur, (Ex. 375).

In 1905 during his cold weather visit he was having this sort of good time, and in 1907—the visit during which his mother died, and in 1908 too looking to the evidence of Mr. Abdul Monnan, (P. W. 472) a respectable Mahomedan Citizen of Dacca. This mass of evidence there is nothing to contradict, nor is there anything in the evidence to repel the trait it reveals. It gives the true meaning of the expression 'womanising' of Mr. Meyer and of the word 'wild' which Mr. Rankin, then Collector of Dacca, thought would fit them. Rebati Babu a senior pleader of Dacca has described the morals of the 2nd Kumar as 'abominable'.

These were their morals ; and their life at home the evidence has not left obscure. The ladies lived in the *ander*, upstairs. The Kumars lived in their *baitakkhana*s. The 2nd Kumar's baitakkhana was the easternmost room on the ground floor of the Rajbilas (the room no. III on the map, Z 63). Behind it was a room furnished as a bed-room. Behind that is the veranda which used to be the place in which he took his meals. To the north of that was his bathroom which contained a couple of privies, and a tap. The 3rd Kumar's Baitakkhana was the westernmost room on the same floor—the room 126. North of that was the room in which he took his meals and on the room north of that was a room also furnished as bed-room, and beyond that his bath-room. This is the account collected from Billoo (P. W. 938) and Sagor (P. W. 977). Billoo, the nephew, had lived at the Rajbari so long as the Kumar lived, and Sagor had been coming

to it and staying at it since his marriage in 1903. Nothing in this account has been disputed except that the bed-rooms aforesaid are said to be only *Bishramghars* or retiring rooms and not the rooms in which the Kumars slept at night, and the 2nd Kumar's bath-room is said to have been elsewhere. The 2nd Rani says that each Rani had a bed-room upstairs in the Andar, and that their husbands would sleep with them, at night, and also at noon, unless they took their siesta in the retiring rooms, near their Baitakkhana. Bara Kumar had such a bed-room near his Baitakkhana too, the room No. 96, his Baitakkhana being the room No. 91, his bath-room being the room No. 97 and his *Khabarghar*—the room for taking meals—opposite his bed-room, being No. 94. In short, each Kumar had his Ba'takkhana, and his bed-room, and Khabarghar, and his servants' room in the outer Bari, and the Rani's account that the Kumars would come to sleep upstairs, and would pass some time in their company, in fact the picture of married bliss which she tried to give, is untrue. Confronted with certain letters written by her mother, and by her sister, her picture vanished. In these letters (Ex. 300, 303, 293, 302, 304, 293 (3)) which spread over the whole period of her married life she, her mother is worrying about her, inquiring whether the 2nd Kumar who despised his wife's people, was kind to her, and whether they never met during daytime, though she knew that was considered height of immodesty in her husband's family ; and the sister, in one of her letters, asks her to dress well, and to wear a smile on her face, and to go downstairs to sleep with the Kumar, if he slept downstairs. The old Khansama of the 2nd Kumar,

Protap, also called Naisya (P.W. 48) and Probhat (P.W. 52) told the truth when they said that the Kumars, each of them, would sleep in their bedrooms adjoining their baitakkhana, and that the Ranis would come to them when sent for, though the Bara Kumar, it seems, sometimes slept upstairs with his wife. As to the 2nd Rani the evidence of these old khansamas is that she would come to her husband, only occasionally, and that at night, and only if sent for by a boy khansama, Bepin (D. W. 140) and this would happen only occasionally. I notice a staircase by which she could come down close to his baitakkhana, and another staircase descending where the Chhoto Kumar's baitakkhana was. The 2nd Rani and the 3rd Rani deny this, and some of the witnesses for the defendants, e. g. D. W. 21, Rukmini who was Chhoto Kumar's Khansama (D. W. 41) Madan Molla, a punkhawala, and Harendra (D. W. 386) who says he was a servant of Indumoyee, and Birendra (D. W. 290) who became the 2nd Kumar's personal clerk only in 1908, and Bepin, the 2nd Rani's khansama, deny this, and call the bed-room next to the baitakkhana a *bisramghar* only and defendants No. 1's that brother, Satyendra Babu adds during his visits to Jaidebpur he would sleep in the bed-room next to the baitakkhana. But the account given by the witnesses on the plaintiff's side, the sister, Billoo, Sagor, the two old khansamas of the Kumar himself, is confirmed by little details extracted from the witnesses on other side. It is admitted, for instance by a witness for the defence that the 2nd Kumar would rarely go upstairs during daytime (D. W. 41, the punkhawala who would pull the punkha in the bedroom downstairs). Birendra Babu who was one of those who went to Darjee-

ling, and whose credibility is very questionable that will appear later—says that the 2nd Kumar would sometimes sleep in this room, and sometimes upstairs. (D. W. 41) calls this the Kumar's bed-room and says that ordinarily he would sleep not there, but upstairs. An old khansama of the Bara Kumar says that he slept sometimes in the bedroom next to his baitakkhana, and sometimes in Andar. One fact of significance is that at present this room of the 2nd Kumar and the said bed-room of the Bara Kumar, are lighted and incensed at night in their memory, and the furniture there dusted, and the room swept, shewing that it is these rooms that are associated with their memory, no room upstairs.

The Kumars lived in the outer bari, slept in the outer bari, and took their meals in the outer bari. Their wives or the ladies had nothing to do with their meals. It is the khansamas who would look to the Kumars' meals, not the ladies says the old khansama (P. W. 48) and this has not come to be admitted. The servants examined on the side of the defendants say the same thing. Each Kumar had 15 to 20 khansamas, a couple of bearers, some four punkhawalas, an orderly. The khansamas would make tea, serve *pan* and tobacco—the Kumars smoked hookas—spread *assan* for their meals, bathe them, wash their clothes, and the bearers would help them to dress. The 2nd Kumar would take his meals, squatting on the floor on the verandah north of his bedroom. His food would come from kitchen in the *ander*, from the baburchikhana, and from a kitchen, improvised or otherwise, where the khansamas would also cook. He would eat with his fingers, not with knives and forks, and this was true of each of the Kumars. So far the account has been collected

from various witnesses on either side, and is not disputed (D. W. 98, 140, 290, 377, 386, 21, 41, 43, 310, and P. W. 938, 477, 660, 917) but certain exigency of the case suggested, at the point when the 977th witness for the plaintiff was in the box, a "dining room" as distinct from the Khabarghar where the Kumais sat on the floor and ate their meals with their fingers, a dining room where the 2nd Kumar ate, not with fingers, but with knife and fork, and what is called English food, and this led to cutlery, crockery, napery. and menus, khansamas going about with watches, and even a faint suggestion of livery and evening clothes. This points as to how far they knew of English meals, or the English ways of taking them or table ware would be dealt with when I come to the cross-examination of the plaintiff, and the degree of knowledge imputed to the Kumar, not only of the things, but of their English names.

As to their ordinary dress, it is now agreed that the 2nd Kumar would ordinarily dress as a Bengali. He would put on dhuti, folded double, in lungi fashion and a banian, or a panjabi when going out. His sister says that he affected gaudy dress-red, yellow, purple, and Chandra Sekhar Babu (P.W. 959) mentions also lungi. The second Rani never saw him in lungi so she says ; but Phani Babu (D.W. 92) concedes lungies, Burmese or silk and Rai Sahib (D.W. 310) grudgingly admits, when confronted with a tailor's bill, pink, apparently because that did not quite fit in with English style. The 3rd Kumar affected loose pyjamas, and the Bara Kumar dhuti worn in the usual way. It is only when they went to meet a Saheb or high officials, they would put on European clothes. So far there is no dispute now (Vide D. W.

7 the Rani, Birendra D. W. 290, D. W. 21 Rukmini, the Chhoto Kumar's khansama ; D. W. 41 Punkhawalla). All that the defendants insist upon is that when going out on Shikar the Kumar would put on English clothes, or rather Khaki Shikar clothes, which is not denied, except that the plaintiff's case is that this was not his invariable practice, but only for tiger-shoots and the like. I shall have to deal with what knowledge of English clothes or articles of dress, the Kumar had, or how far he knew their names, but in one of the tiger-photos I mentioned he is in dhuti.

Of the daily habits of the 2nd Kumar and of his ordinary pursuits, the account that has been given by the plaintiff's witnesses is clear and consistent, and there is nothing to rebut it except the statement of the Rani which, closely looked at, does not fit any of the facts as to which there is no question and the difference is really very little, except for a complexion, a certain refinement which she seeks to put on them. The account given by Jyotirmoyee Debi from childhood upwards is this :

As a child the 2nd Kumar, unlike the 1st and the 3rd was turbulent, and wayward, but at the age of five his education began in the sense of *hatekhari*, i. e. the ceremonious initiation into the art of writing, and he got under a tutor, Dwarika Nath Mukherjee, who had been teaching the elder children. Two years later, the 2nd Kumar got under the same tutor, and it will have to be seen how far the teachers' efforts later, there was another tutor went, and what success they attained, but as this tuition, or appearance of it, was going on, the 2nd Kumar was playing, as boys do, with goats, and ducks, and sheep, and pigeons, pointing to a trait that led to the

menagerie he collected after the father's death in 1901: it was quite a good collection, two tigers, two leopards, two bears, one white fox, one ostrich, three partridges, two orangotangs. It was dispersed by Mr. Heard during the first Court of Wards in 1904.

As he grew up, he would drive, ride, drive tom-tom, got about on an elephant, and his one pursuit as to which everybody is agreed is that he was fond of shikar, and the estate was full of forests where one could get shikar. He would go out daily, or almost daily, with guns on elephant, and shoot boars, deer, jackals, rabbits, and tigers also, as has been said. Every body is agreed that he was a good shikari, and the evidence on the side of the plaintiff is that he was a good rider. So far the account is common ground.

As to his daily habits, he would take tea, and biscuits and bread, in the morning and go out to look after the horses in the stables, the elephants in the pilkhana and cows in the *bathan*. Innumerable witnesses have seen him in the stables or pilkhana. He would be generally found there (e.g. P. W. 18,39,2,4,8,573, 959). It is not necessary to give the full list of the witnesses on the point, as the fact that he would be generally in the stables and the pilkhana has not been denied by any body, and admitted by Dr. Ashutosh. The defendant's witness, Amanulla (D. W. 61), a Mahut admits, while saying that the 2nd Kumar's company was not usually men of lower orders, that the 2nd Kumar would come to the Pilkhana in the morning, and that the Mahuts would go to him for orders for money for elephant's requirements or to tell him if an elephant happened to be ill. And if he was looking to the pilkhana and the stables and the *bathan*,



The Three Kumars—In their youth.
From left—(i) Kumar Ramendra Narayan Roy, the Plaintiff.
(ii) Kumar Ranendra Narayan Roy, the eldest brother
of the Plaintiff. (iii) Kumar Rabindra Narayan Roy,
the youngest brother of the Plaintiff.

and if the Mahut of the twenty elephants and the syces of the forty horses, and the coachmen, the blacksmiths, the staff in the chiriakhana, so long as it existed, were coming to him for orders, there would be truth in the evidence that he was surrounded by men of the lower orders whether you call them company or not.

But leaving these aside, what was his usual company ? A low lot consisting of young men who called themselves his clerks, though one of them only was paid by the estate as personal clerk (D. W. 290 Birendra). The 2nd Kumar, says Phani Babu, mixed with some of the bhadraloks of Jaidebpur, people 'on his personal staff', and some of the Officers of the estate. The Officers mentioned by Harendra. D. W. 386, were Birendra (D. W. 290) and Anthony Morel, Edwin Fraser, Macbin, three native Christians, referred to by the witnesses as Bengali Sahebs, and one Money Sahib, also a Bengali Saheb, and other people referred to as *Kerani* Babus ; and two other names Abani, son of Nicca, and Abani, son of Nishi Doctor Polasana were also mentioned. These two persons are D. W. (338 and 385). The former belongs to Jaidebpur, and from the account he gives of his education, he could not mix with the 2nd Kumar after his father's death. He is now a Naib of the estate. Just as Birendra is record keeper, and both of the two Abanis were under 25. Birendra, a man of Jaidebpur, joined the 2nd Kumar's staff in about September, 1908 and his salary which he says was Rs 30/- was paid by the Kumar, and not by the estate. Of the youngmen about him the only man paid by the estate was Macbin who kept the Kumar's accounts, and it was when he died in Magh 1315 i. e. January -February 1909, that Mukhunda Guin was appo-

inted personal clerk, though at Darjeeling he came to bear the designation of private Secretary.

The Kumar's company was these young men—these hangers on, as Satya Babu says, who call themselves his personal staff. They were not syces or mahuts but a low lot for whom there is a good word in Bengali—*Mosahels* such as collect round a wealthy youth. It is of these that Mr. Meyer was speaking when he wrote in his report : “They are constantly surrounded by low companions who simply cheat them, and get them to commit all kinds of follies”.

These were his company. No decent man could be named or called except of course Phani Babu (D. W. 92) whose evidence will shew when I come to discuss it what kind of man he was, and what purpose he has served in this suit.

In 1908 then the Kumars, all in their twenties, were indisciplined dissipated youths, the Bara Kumar a drunkard and a rake, the 3rd Kumar no better though he did not drink, and the 2nd Kumar a debauchee in his teens, had grown a hardened libertine infected with syphilis that had broken into ulcer. In 1906 the 2nd Rani was taken to Calcutta, as she says, for treatment, and the letter of Indumoyee who had gone with her shews that the doctor pronounced that she was free from infection, but suffering from anaemia. Mr. Chaudhuri, learned Counsel for the defendant, pointed to this letter and this treatment as proof that Jyotirmoyee Debi must have known about syphilis, and her evidence that when the Kumar went to Darjeeling it was Satya who told him that the ulcers were “bad”, and not ordinary ulcers was a pretence. She did not say that she did not know about

the syphilis, but her ignorance that its effect was the ulcers must have been shared by many.

In 1908 therefore, as before, the three Ranis were living in the 'andar', in the sluggest pwdah-visiteng nobody, living as a kind of relatives, among women dominated by elder women; and their husbands were living out, sleeping out, dining out, surrounded by a low and obsequious lot as company, waited upon by heaps of servants, and provided with heaps of money to buy pleasures they sought. Mr. Chaudhuri, during the cross-examination of Jyotirmoyee, suggested that in 1909 the Kumars bought jewellery worth Rs 80,000 for their wives. The ornaments were bought all right; it led to a decree afterwards but they did not go to the wives and the Rani would say so, Bara Rani would not write the letter she did and the defendants themselves would not introduce the Anglo-Indian girl to whom Rs. 7000 is said to have gone. There is no evidence, in fact, of a single present which the 2nd Kumar made to his wife. On the top of all these came the syphilis, the risk of infection, and the filthy sores. I do not find anything in the short married life of this childless lady to which she could look back with pleasure, nothing, at all events, in the associations that could draw her to her husband's home after she went to live in Calcutta 25 years ago, until after the trial began.

The picture that she gives of her married life is not true. It is displaced by facts that rest upon nobody's credibility, nor upon the pathetic advice in her sister's letters. In a petition that she presented in 1911 she was complaining of the Kumars' wild extravagance that had involved the estate in debt, though the income of each of them was about a lac of rupees.

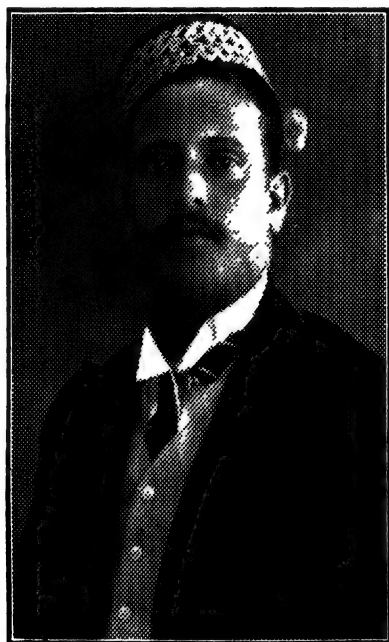
Apart from their habits and morals, there is evidence

as to their deportment and intelligence. The 2nd Kumar was shy of gentlemen, though when he met them he knew how to behave (P. W. 326, 167, 262, 320). The witnesses I have put within brackets are : Charu Chandra Das Gupta, Assistant Headmaster of a Government School in 24 Parganas ; Harendra Kison Acharya Chaudhuri, a Zemindar of Mymensingh, Joges Chandra Roy, formerly Asst. Headmaster of Jaidebpur School, Rames Chandra Chaudhuri, a respected citizen of Dacca. There are only some of those who have spoken on the point, but I should mention the evidence of two other witnesses. One of them is Mr. Stephen, a jute merchant of Dacca and who was a neighbour of the Kumars at Dacca. He says that he would not call the 2nd Kumar intelligent, but he was not a dull person. Bit of a fool you may call him says he, but his manners were those of a Rajah's son, though they might have been better. He was not an idiot, says, P. W. 320. Rames Babu, idiot in certain matters, e. g. literary matters, but in riding, driving, elephant-riding he was very intelligent. Mr. P. C. Gupta (P. W. 461) who is a man of position, and trained in England as an Engineer says 'that the 2nd Kumar was not intelligent, but not a fool. Not a reformed person, but 'broad'. Fit enough to mix with ordinary bhadralogs but not in society. Not polished as Rajah's son. He would not rise to receive a gentleman—that sort of thing I would not expect of him. He was rather shy, would be generally in the Palace, and mix with servants, coachmen, mahuts, and syces. The 2nd Kumar was shy of bhadralogs and tried to avoid them., This gentleman was intimate with the 2nd Kumar, and their families were on visiting terms, and though there was disparity of age, the

matter need not rest on his testimony alone. It appears from the evidence of many witnesses, fits in with the other facts known about him, though this conclusion would be wrong, if he was educated, if he knew English, and had the 'polish' of an 'educated aristocrat', as Mr. Chaudhuri put to Mr. Ghosal (on commission). This as I shall shew when I come to deal with the Kumar's literacy or learning is hardly arguable on the evidence including that of the witnesses of the defendants themselves.

I would now add in a general way, avoiding all analysis of the body which must come later, how the 2nd Kumar looked. His latest photo is the Ex. A 10 the latest before he went to Darjeeling. It was taken in April 1909 after the jolarpar shoot, as I said before, Ex. a (2) is the photo next before. At the present moment I shall attempt no description, but might give a few details which do not appear in a photo. His figure was well-knit and muscular as every body agrees. His hair, according to Lt. Col. Pulley (D. W. 1) was auburn, with a distinct shade of red, what numerous witnesses have called pingala or brownish ; and moustache of the same colour but lighter. His eyes were *kata* that is to say, not the ordinary dark Bengali eyes, but the exact colouring is a matter of serious dispute. According to plaintiff, it was brown or brownish ; according to the defence it was bluish. His complexion seems to have impressed the witnesses most of all. I would not go into the exact shade, but the witnesses as on both sides have called it *Sehebi*, or approaching European. Mr. Bankin, an Englishman, calls him fair in 'the face' ; Lt. Col. Pulley, "very fair for a Bengali with a suspicion of complexion on his face." A witness for the defendants, quite a respec-

table man calls it a peculiar kind of fairness (D. W. 292) "fair like an Englishman" "fair like a Saheb" "extremely fair" "Norwegian" are only some of the terms used by the witnesses for the plaintiff to indicate the complexion but the case of the defendants is that it had a tinge of yellow. I am not going into the exact shade now, but there is no question that he has extremely fair, for an Indian, and in this respect, and in the colour of the hair he resembled—I am not going into the exact shade—the 2nd and the 3rd Kumar, and the eyes of the 3rd Kumar were also *kata*, and the exact colouring in his case was bluish. The case of the plaintiff is that these two brothers and Budhu Babu, Jyotirmoyee Debi's son had the same sort of appearance—the same sort of complexion the same sort of hair and their eyes were *kata*, i.e., not the usual black, but different. This fact that these three had the same sort of complexion, and hair, and the same sort of eyes in the sense that they were *kata* was being question at one stage, as I shall point out below, but literally hundreds of witnesses on the side of the plaintiff had to depose to this, before the defendants began, and then their witnesses too said the same things, and Mr. Chaudhuri during his argument, seized upon this similarity between the three, and its effect on the mind of the people directly they saw a man moving about with Buddh Babu, and looking like him in these particular respects, as explaining the deception that led to, or might have led to, the enormous mass of direct evidence that the plaintiff is the same man. Jyotirmoyee Debi, the sister too has a complexion extremely fair, eyes hazel, and hair brown, Bara Kumar and the eldest sister were common place. They were dark, or rather darkish. Bara



Plaintiff Ramendra Narayan Roy.
(before his Darjeeling incident.)

Kumar was tallish, about 5 feet 10 inches, had no hair on his face, fat, with a squint in his eyes which were ordinary Bengali eyes, that is to say dark, and his mouth was twisted on one side. Chhoto Kumar was fat too, but less so shorter than the 2nd Kumar whose height on the 2nd April, 1905 was, according to the medical report framed by Dr. Caddy, with a view to life-insurance 5 feet and 5 inches. A peasant witness, (D. W. 82) examined for defendants, says, talking of the 2nd Kumar that he was not like our *dishi lok* (ordinary run) but like *Saheb Subo*. In a word his appearance,—the complexion, eyes, and hair was extremely uncommon and the tout ensemble ‘arresting’, as one witness has said particularly with reference to his complexion. “I have never seen man so pinkish fair (P. W. 51).” This witness is not of much or any use as a witness to identity—he had seen the Kumar only in streets, but he was speaking of the day he first saw him, standing at the gate of the house at Rajbari, but the point is that he has not forgotten him. If you saw him, you could not easily forget him. You could not easily get another man to personate him among those who knew him.

In 1908 then one finds this youth, then twenty three with a wonderful complexion and uncommon eyes and hair and a well-knot muscular figure, living the kind of life I described, riding, shooting, driving, “womanising” going about on his favourite elephant Fulmala, visiting Calcutta during Christmans or thereabouts, for having a good time, coming frequently to Dacca, surrounded by moshahabs and servants, wasting money with an extravagance that told heavily upon a fine estate, and thoroughly spoilt by the men about him and the superfluities that

money could buy. What else he was, or what else he knew, whether he was educated or whether he could talk English, or whether he knew music, or such sports as foot ball or cricket, or tennis or polo or billiard, whether he knew a camera or how to take a photo, or whether he knew any thing about English clothes or the numerous English terms put to the plaintiff are matters of serious controversy in this suit, because the cross examination went, as I said to such general knowledge and not to the stores of what could have been the memory of the Kumar alone or of a member of his family. These matters must be considered after the points put in cross examination when the exact traits and the exact degree of knowledge imputed. Till now I have been giving, only in a general way, the antecedents bearing upon the situation in which the plaintiff came and his story opens ; so that the motives, that came into play, the people who became the principal actors, the exact environment in which the plaintiff appeared and moved, the acts he evoked, the emotions he excited might be known. It will be necessary there fore to continue the narrative down to the moment the plaintiff appeared, before I go into the direct evidence as to identify.

The year 1908 arrived. On the 21st Baisak 1315 (4.5.08) the 2nd Rani's brother, Satya Babu, was married, and on the 11th May (28th Baisak) took place the marriage of Billoo, the eldest son of Indu Mayee. These dates the Rani gives herself. She says that on the occasion of her brother's marriage she paid a visit to Uttarpara—travelled from Jaidebpur with her brother—and this visit lasted three weeks and she left Uttarpara

for Jaidebpur on the 29th Baisak. On the 6th May according to her, the 2nd Kumar went to Uttarpara, and they returned home together. This visit of the 2nd Kumar has been disputed, but before this visit he is said to have written one of the disputed letters bearing date 13th Baisak, 1315 (26.4.08) to his wife.

On 12.4.08 the three Kumars borrowed Rs, 25,000 (Ex. 05.06) and the signatures on the promissory notes besides other documents I shall have to mention below have been of value on the question of identity.

In this examination-in-chief Satyendra Babu says that after the marriage of the 2nd Kumar with his sister he would meet the three Kumars very often, in Calcutta, Dacca, Uttarpara and Jaidebpur, and that he was on intimate terms with them. In May, 1908 he passed his B. A. and in October he was a B. L. student. In October, 1908 he came to Jaidebpur, and thence went to Shillong (1908) to secure a post under Government. On 22.10.08 his mother writes to the 2nd Rani saying that she had received a telegram from Satya that he had gone to Shillong, and Satya admits that he was looking for an appointment, and hoped to get it through Bara Kumar's recommendations. In this letter (Ex. 293 (4)) she was asking that Bara Kumar might help him to the post of a Deputy Magistrate, or Sub-Deputy Magistrate, as a post in the Police which was in contemplation would not be suitable. Satya Babu was however staying on at Jaidebpur the mother getting furious, as he was not going back home, and neglecting his studies. One sees this in three of her letters, dated the 27th November, 1st December, 2nd December (Ex. 293 (8), 293 (6), 293 (9)). Satyendra Babu admits that he had gone to Shillong, as she men-

tioned in the letter of the 22nd October and the letters certainly shew that the lady thought that Jaidebpur was bad for her son, and although she was being told and the 2nd Kumar was not well, and having fever, she was thinking that a pretext.

As Satya Babu had not returned to Uttarpara even on the 2nd December, the date of the last letter of the mother, it may be supposed that he left almost immediately after, as the 1st and the 2nd Kumars, it seems started for Calcutta on the 5th December, and arrived in Calcutta on the 6th. The date appears from the telegrams sent to Labchand Mati Chand, a firm of jewellers at Calcutta, to keep a house ready and to send to the station on the 6th. (Ex. Z 195, and Z 195 (2)).

The two Kumars arrived in Calcutta and stayed in the house of Labchand Mati Chand in Police Hospital Street. They stayed there for 15 days with the two Ranis, according to the evidence of Saubhagya Chand, a son of Labchand (D. W. 87).

The house was their guest house. Later, they removed to a house in Wellesley Street, and still later, Chhoto Kumar came with another party, and stayed in the house in Wellesley Street. Bara Kumar as was his custom, went to live in another house near the Water-Works in Wellington Street. This account one collects from the evidence of the Plaintiff, Billoo (P. W. 938) and Jogesh Roy (P. W. 262), on one side and Saubhagya (D. W. 87), Ashu Doctor (D. W. 365), Bepin, a Khansama of the 2nd Rani (D. W. 140) Rukmini, a Khansama of Chhoto Kumar (D. W. 21), and Chhoto Rani (D. W. 89). These do not exactly agree as to who went in which party- according to Rukmini, all the Kumars went toge-

ther which no body else says, and according to Chhoto Rani she went with the first party, and Bara Rani and Chhoto Rani came with the 2nd, but there is no doubt that the family went in two parties, and in the 2nd party went Dr. Ashutosh Das Gupta, as he says, and Jogesh Roy (P. W. 262) then Assistant Head Master, Jaidebpur High School.

The purpose of this trip to Calcutta was the treatment of the 2nd Kumar. As to that every body is agreed. It is also agreed that his syphilis had already broken into gummatous ulcers. The case of the defendants is that he was suffering from billiary colic as well, and also fever. It is denied that he had these at all and the case of the plaintiff is that the billiary colic was invented after his supposed death, and is being put back to this point, like the fever necessary to explain a particular prescription at Darjeeling ; and the fever that was being mentioned by the mother-in-law in October and November, 1908 was the name that had been given to syphilis. It is quite clear that he was not coming to Calcutta to treat fever, even if that was a fact. The point, however will be considered when I come to the issue of his death. Of the two witnesses who touch this period one Anthony Morel, may be mentioned at this stage.

He was an Indian Bengali Christian, settled at a village in Bhowal, and employed in those days on the estate on Rs. 30/- a month for looking after the stables, to see to the feed of the animals, horses and elephants. He was examined on commission. The evidence going to this period, including that given on the side of the defendants, shews that the Kumar was going about, apparently well driving about in tom-tom, would go out after dusk

(Morel), saw Mr. Lahiri, a Vakil who has deposed in this case, and called one evening with an Anglo Indian girl at the show-room of Messrs. Labchand Mati Chand, and bought for her expensive presents. This last item, given by Saubhagya Chand, (D. W. 87) is not rendered improbable by the Kumar's morals which admittedly were bad, but the facts going to the credibility of this witness, and the fact that the object of the episode was to prove ability to talk English, and if this was a fiction, the incident was no less so, looking to the English speech it is said to have evoked, and possibly to the syphilitic ulcers on the arms, and on the legs, despite the bandage.

Before the visit to Calcutta came to an end, it was arranged in Calcutta that Lord Kitchener would visit Jaidebpur in February. The family returned about the 10th, and Lord Kitchener on the 15th or 16th, as the witnesses on both sides agree (P. W. 907, 952, 907 and D. W. 310. Rai Saheb Jogendra). The exact date was probably 14th looking to Ex. 68. It is not denied by any body that the visit, which was private, had been arranged in Calcutta. He came in a special train from Naraingunge (P. W. 952. a clerk of the Manager). His party consisted of Col. Birdwood Captain Fitzgerald and an English doctor. He was received at the station by Bara Kumar, and drove in the after-noon to the Rajbari in the silver-mounted carriage I spoke of. The party put up at the Baradalan, and dined there. Messrs. Peliti of Calcutta catering. The next day Lord Kitchener and his staff proceeded to Kodda, crossed over, got upon elephants, and entered into the jungle called Bagbari. The 2nd Kumar was with the party, on a different

elephant, and the shoot ended—Lord Kitchener bagged only a Sambar—and the party returned to Jaidebpur and left the same day.

The account has been collected from the testimony of the officers who had duties connected with the affair ; and the Mahuts who went out with the elephants. These are ; Ganga Charan, the Nazir ; P. W. 67 a beater ; Dilbar, and Abdul Jamadar, the Mahuts, (P. W. 99) ; (P. W. 973 ; 907, 952, D. W. 310, 37, 43, 61). The account given so far as agreed or not disputed and this visit of Lord Kitchener would have little bearing on the issue before this court, if the defendants' witnesses had not put into it certain details apparently to shew that the 2nd Kumar and the other two Kumars were 'Well-polished, well-educated aristocrats'. It is said they dined with the Lord Kitchener, and his staff on the day of his arrival, they and their manager Mr. G. S. Sen, the Deputy Magistrate ; and that they lunched with him and joined them at break-fast and lunch, when out on shikar, in tents. That is the evidence of Rai Saheb Jogendra (D. W. 310), a Mahut, D. W. 43, and a cook, Alek Decosta. This evidence contains internal marks of untruth of a conclusive kind, but such contacts with Europeans, said to impart knowledge of English will be dealt with under literacy, to avoid repetition. If placed together, certain facts will emerge.

Lord Kitchener's visit was, as I said about the 14th February. About the middle of March Satya Babu arrived at Jaidebpur. He had been with the Kumar in October and November, down almost to the time the Kumar had left for Calcutta, he was meeting them at Calcutta, and came again. The case of the plaintiff is that he came,

inveigled the 2nd Kumar to Darjeeling, in order that he might be done to death, and this object he achieved with the help of the family doctor Ashu Tosh Das Gupta, though the plaintiff escaped. This charge was made against him and Ashu doctor almost immediately after the plaintiff declared that he was the 2nd Kumar, as will appear below. Satya Babu admits that it was telegraphed to him in Calcutta in May, 1921. Satya Babu says that it had been settled at Calcutta that the 2nd Kumar should go to Darjeeling for a change, the doctors having advised a change to cold climate. He says he came to Jaidebpur on his own business which was to secure a job under Government and that he came, took a recommendation and proceeded to Shillong returned, and was asked to go with Mukunda Guin an officer of the 2nd Kumar to Darjeeling to secure a house.

Confronted with the letter from his mother dated the 22.10.08 where she was saying that she had received a telegram from her son that he had already gone to Shillong, Satya Babu admitted that he had gone to Shillong then, as the letter said, and not on this occasion in 1909, when he came to Jaidebpur after the Lord Kitchener's shoot. He had been reading the Rani's evidence, but had apparently missed her statement that it was at Jaidebpur, not at Calcutta that Bara Kumar settled, in view of the medical advice that he should go to either Mussuri or Darjeeling that it should be Darjeeling, and that her brother, being written to come. Taken alone, there is nothing in this point. It is odd that Satya Babu should begin with a falsehood on the point, and hide what I find to be a fact that it was he who proposed this trip to Darjeeling, and went with Mukunda



Shikar Photo -after tiger shooting -before
going to Darjeeling in 1909.

Guin, the 2nd Kumar's clerk, or, secretary to find a house at Darjeeling. This is the evidence of Jyotirmoyee, of Billoo, of the old Dewan, Rasik Roy, and it must be preferred to Satya Babu's account which started with a falsehood.

Before Satya Babu had started for Dajeeling to engage a house, had taken place the last big shoot of the 2nd Kumar, some 15 days before he set out for Darjeeling. This shoot was at Jolarpar near Salna Cutcheree and at this he had shot a Royal Bengal tiger. That was his 2nd tiger, seeing that his first he had shot in preceding October or November, at Nagorgarh, as a witness for the defendants Kalimuddi Hazi D. W. 24 says. This witness remembers this Shikar which was, he says, on a Monday and he saw the later Shikar at Jolarpar which he fixes in Falgun or Chaitra following, that is about the beginning of April, as the other witnesses who speak to this Shikar alone, indicate.

On either occasion a photo was taken of the 2nd Kumar, with the tiger he had bagged Ex. L is the Photo after the Nagargarh shoot.

In this the Kumar appears in dhuti, and punjabi, and this photo may be referred to as the Tiger photo in dhuti Ex. A (10) is the photo taken at his last shikar. In this he appears in breeches and patti. This photo was the last photo taken of him before his death, or supposed death, at Darjeeling. It may be referred to as the Tiger photo in breeches. Satya Babu had gone out with the Shikar party on this occasion that is not disputed, though it is said he had to be put down some where, as he was frightened. There is quite a body of evidence touching this Shikar (P. W. 671, 15,

9, 26, 85, 107, 374). Its only importance in this case is the photo it has left, and this as well as the other Shikars during this period, including one some 5 or 6 days before he set out for Darjeeling, indicate the state of his health. He was continually going out on Shikar. He paid a visit to Kasimpur (Vide A. P. Rai Chaudhuri D. W. on commission). He went to the Baruni fair at Kodda (D. W. 383). He was coming to Dacca, and on the 1st. April renewed, along with his brothers, a note for Rs. 5000, and borrowed, also along with his brothers Rs. 50,000 on the 9th April, (Ex. O to O 4). On the 16th he dined at the house of Mohim Babu, the family doctor, and on the 17th, signed an order for payment of Rs. 30/- to his son, Ashu doctor, for arranging meals at Goalongdo Z (ii) (16). On the 12th April he had executed a deed in favour of Babu Digendra Ghosh (P. W. 228) (Ex 7), his last business act before his departure for Darjeeling. Looking to these undisputed acts, and the body of evidence touching this part of the case, there is no doubt whatever that the 2nd Kumar was not ailing when he left. The 1st Rani says that he went away, "with a smile on his face" the sort of detail that sticks, if a man does not return. He actually started on the 18th.

Nishi of Faras-khana (P. W. 189) tied up his beddings. At the Railway Station at Jaidebpur he accosted the station master. Ashu Babu, (P. W. 59), and asked in Bengali : 'Master, where is my carriage' ? The witnesses who saw him there at the station (P. W. 220, 881, 949), Jatin (P. W. 9) who went with him up to Goalongdo, Sagar and Manuck who came with him up to Dacca, a Railway man (P. W. 231) who accosted him at Fatulla,

as the train stopped, and Sarba Mahan, the estate-Muktear, who arranged things for him at Naraingunge, where he got on board the steamer have all deposed. This body of evidence, to shew that he was not ill at all, but was quite healthy, except for the syphilis, has not been questioned now, but there was a time before the trial when, the defendants' case, looking to their witnesses, Anthony Morel and Mr. R. N. Banerjee, examined on commission seems to have been that the Kumar was ailing when he reached Darjeeling, and was continually ill at Darjeeling. After this body of evidence, so little has remained of that case which a certain medical certificate seemed to have suggested, that the defendants themselves led evidence apparently because another case required that he should be seen out of doors that at Darjeeling the Kumar was, practically speaking well until he fell ill in the early hours of the 6th May, 1909., some of the witnesses describing him as I have already said, as a person who looked full of health, "glowing health." The point will be discussed when I come to the topic of the alleged death, but the evidence now uncontradicted, is that on the 18th April when the Kumar set out for Darjeeling, he was looking well, and there was nothing the matter with him, so far as outward appearance went except syphilis, and the ulcers about his elbows, and on his legs covered, those on the arms at all events, by bandages. While travelling he was dressed in a lungi, or cloth folded like lungi, and a punjabi (shirt). (P. W. 881, and D. W. 290, Birendra one of the party).

The Kumar, with his party, reaches Darjeeling on the 20th April, 1909. He occupied the house called "the step aside" a house near the Chowrasta, which Satya and

Mukunda had engaged. Satya came back to Jaidebpur and went back with the Kumar's party, but Mukunda had been staying on. The house had been engaged 5 or 6 days before, as Ram Singh, the agent of Mr. Wernickle, the owner, has deposed. This had not been denied. The lease was taken from the middle of April to the end of June.

The Kumar with his party occupied this house, fell ill in the small hours of the 6th May, and died or supposed to have died on the 8th, eighteen days after his arrival at Darjeeling. There is a considerable body of evidence going to this period, to his illness, treatment, and apparent death, and alleged cremation, but the case of the plaintiff is that he died in the sense that he was taken for dead between 7 or 8 P. M., taken to the Sasan that very night, after nine but escaped cremation under the circumstances he pleads. The case of the defendants is that he died at about mid night at 11-45 according to the affidavit of death sworn by Col. Calvert, then Civil Surgeon of Darjeeling, that the dead body lay all night in the house, and was carried to the Sasan the next morning with a procession, and duly cremated. This funeral procession has been admitted, there is no question that the thing burned at the Sasan on this day was a human body, but the case of the plaintiff is that it was not he but some other body procured during the course of the night after his own had disappeared from the Sasan on the previous night, and this was done to avoid a scandal, if not for any thing else, such as the insurance money, so that it might not be thought at Jaidebpur that the staff had not troubled even to cremate the body, an enormity in the eyes of Hindus. The party at Darjeeling consisted of these :

1. The Kumar, then not even 25.
2. His wife, then barely 20.
3. Satya Babu, her brother then about 24 (D. W. 381).
4. Dr. Ashutosh Das Gupta then about 25 (D. W. 265).
5. Mukunda Guin, the Secretary, then nearly 30 (Now dead).

6. Birendra Bhaerjee, a clerk, then about 21, whose uncle had married a sister of a kinsman of the Kumars (D. W. 290).

7. C. J. Cabral, a tailor, and part time agent of the family house at Dacca, a native Christian who according to the evidence was illiterate (P. W. 265) now dead.

8. Anthony Morel, also a native Christian, then about 41.

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| 9. Jaladhar. | } Khansamas or body-servants. |
| 10. Jamini (dead). | |
| 11. Akhil | |
| 12. Prosanno (dead). | |

13. Bepin (D. W. 140).

14. Sarif Khan, an orderly, an up-county Mohomedan.

15. Ambika Chakraborty, a Brahmin cook.

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|-------------------|------------------|
| 16. Narabir. | } Gurkha Guards. |
| 17. Falan Singh. | |
| 18. Hari Singh | |
| 19. Dhanman Singh | |

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|------------|-----------|
| 20. Jitlal | } Bearers |
| 21. Jhagri | |

22. A. Baburchi, Alimuddi, according to plaintiff ; Abdul according to defence.

23. Tirtha Dai, a maid servant (dead).

24. Kamini, another maid servant, now living at Jaidebpur.

scheming and as shrewd and as sordid as any of you might expect to find in a man of sixty.

The party, it appears from two telegrams sent, one from Poradh, and the other Damikdia Ghat (Ex. 227 and 228) proceeded by Chandpur Mail from Poradh, and reached Jaidebpur at mid-night on the 11th May. The train on its way passed through Dacca, and Bara Kumar was coming down to Dacca, the down train which was late, Mr. Chaudhuri pointed to this as callousness but obviously he was flying from the outburst of grief directly the Rani reached home, and met the other ladies of the family.

Satya Babu passed the night of the 11th with Chhoto Kumar at the Bara Dalan, as he records in his diary under the date 11th May.

Next morning he met the Manager Mr. Sen, and in the presence of the 3rd Kumar said that the 2nd Kumar had made no will, but given authority to his wife to adopt. That was false, admitted later, and Satya Babu says that he said that as a joke, seeing their fright. He cut his little joke when the family had not recovered from the shock of the death which must have been regarded as a calamity.

The conduct of the 2nd Rani at this point of time was exactly that of a Hindu wife stricken down by a great sorrow. She lay, in her bed-room upstairs weeping, and, according to an entry in Satya's diary, seemed 'deranged' by grief could not recognise her brother. The evidence of Jyotirmoyee Debi and Billoo and some elderly ladies, neighbours who came to see her at this point is that she lay in great grief, and when her brother Satya Babu, came to see her, as some times he did she would turn

away her face and say : 'Don't come to me. You made me a Rani, and you have made me a *bhikharini* too' which proves nothing. What is important is that she behaved exactly as a recent widow would, and there has been no suggestion that she knew or had any thing to do with the conspiracy which it is said led to the poisoning that brought him to the death's door. One little detail however as to which the witnesses who speak to her conduct at this time are generally agreed, is that she would say, as she kept that she was not allowed to nurse him or even to see him very well, before the end, and Jyotirmoyee Debi says that the slightest inquiry as to what had happened would make her weep, so that nothing could be asked. She says herself that when she first met her mother, after her widowhood or supposed widowhood, they did not discuss what had happened, the subject was too painful. This detail too might bear nothing, unless what had happened at Darjeeling, directly it is ascertained, gives to it a significance which it will not otherwise possess. It certainly looked as though upon the appearance of the plaintiff, if he was really believed to be the 2nd Kumar—memory began to work, revived and seized upon this detail as odd.

The Sradh of the 2nd Kumar took place on the 11th day of his supposed death. That is conclusive proof not of death but of the belief that it was a fact. It took place on the 18th May. The 2nd Rani performed a part of this sradh the part called *ekodista* at Tarabari, and the 3rd Kumar the part called *brisotsorgo* at Madhabbari in the Rajbari.

Before this sradh arose, according to the evidence produced by the plaintiff, a rumour that the 2nd Kumar

had not been cremated, and there was discussion as to whether it could be held without a *Kusaputtalika*, and about four months later, arose a rumour that the Kumar was alive and this rumour it is said was current all over Bhowal, and even other parts of Bengal. A rumour can prove nothing except itself. It cannot prove what it says but a rumour, qua rumour, is a fact like any other fact, and might be relevant to explain a relevant fact. I admitted evidence to prove these two rumours, not as proof of the facts they stated, but as explaining a certain fact, otherwise inexplicable, and as going into the environment in which the plaintiff appeared. The plaintiff's insistence upon these two rumours was equalled in vehemence by the defendants' denial, until a certain letter to which I shall presently come compelled the defendants to admit a short lived rumour—that the Kumar was living—in 1917—4 years before the appearance of the plaintiff. In fact they led evidence to shew that such a rumour had arisen in 1917.

Now as to this *Kusaputtalika*, the cross examination to shew that it is not known, or that it is not in vogue or that it is obsolete was utterly futile. It is in the Shastras and it is performed, though the occasion for it must be rare. Where a person dies or is presumed to be dead, after a prescribed period of years, but is not cremated or supposed not to have been cremated, the Sradh can not take place without a cremation of his effigy, made of *Kusa* (kind of grass). This symbolic cremation has to be gone through, before his *sradh*, could take place. Phani Babu (D. W. 92) admits that in the case of his brother who was a suicide and whose body was thrown into a river, this ceremony took place.

The witnesses who depose that before the *sradh* of the 2nd Kumar *Kusaputtalika* was proposed are certainly people who were at Jaidebpur, at the time, who would be hearing the discussion, if it took place. These include, besides Jyotirmoyee Debi, and her sons-in-law and the Kumar's nephew, Billoo (P. W. 938), old servants and officers and relations who were at Jaidebpur then, (P. W. 1, 2, 3, 4, 5, 8, 9, 15, 16, 35, 32, 48, 52, 37, 87, 155, 262, 852, 522, 657, 892, 958, 952). These include Akhil Babu, a Zemindar of Sthal, but father-in-law of Billoo, who was certainly there at the time looking to his telegram dated the 11th May, 1909 (Ex. 262) saying that he was coming on the 13th May. The *sradh* took place on the 18th May—the 11th day counting the day of death as one—and this witness says that he found Satya Babu at Jaidebpur when he came, and that Satya Babu left for Calcutta 2 or 3 days after his arrival, so that Satya Babu is right when he says that he was not present at the *sradh* at all having left about the 16th. He was certainly there about the time of the *sradh*, though not it is the evidence that it was his assurance that he had himself cremated the Kumar, coupled with the desire to avoid a scandal, that led to the proposal being dropped has no inherent improbability, because some of the witnesses speak incorrectly of Satya Babu being present at the time of the *sradh*. That he was not present at the *sradh*

itself it did not occur even to the Rani to say, it did not occur to any body to say so, until Satya Babu was in the box. On the other side some witnesses do say that this talk of kusaputtalika did not take place. These are Rai Saheb Jogendra (D. W. 310), Phani Babu besides the Rani and Satya Babu and a few present employees of the estate, and the only apparently independent witness (P. W.-283) called was a Brahmin who says he was invited to the sradh, and that he went by train from Tangi and was paid his train fare, though it turns out that the Bhairab line had not been opened then. There are good reasons in this case for finding nothing upon the credibility of the present employees of the estate, or any particular witness unless facts which are indisputable support it and as this proposal, assuming it was a fact, will not prove a foundation in fact, unless the fact is otherwise established, the decisive factor on the point should be the fact itself, that the Kumar had not been cremated—supposing that it is established. If it is not established, the proposed kusaputtalika proves nothing ; if it is ; it must have taken place, as there will be no reason to reject the evidence that some of “the motley crowd” who had gone to Darjeeling had began to talk.

But as to the rumour that the 2nd Kumar was living, although it proves nothing, I have no doubt whatever that

it was current, and that it did not begin in 1917 as the defendants urge, but was current from 1909. Not only hundred of witnesses heard it, but these include such people as Mr. Stephen, an Armenian merchant of Dacca and President of the Local Armenian Church (P.W. 112) Hemendra Kishore Acharyya Chaudhuri, a zeminder of Mymensingh who knew the family intimately, Jogesh Roy, the former Assistant Head Master of Jaidebpur School who was at Jaidebpur in 1909 (P. W. 262), Haladhar Roy a millionaire of Calcutta, (P, W. 248) Charu Chandra Das Gupta, an Assistant Head Master of a Government School, Nabendra Basak, a zemindar of Dacca town (P.W. 426), Purna Babu, Sub-editor of 'Dacca Prokas,' (P. W. 355), Mr. Somes Bose of Mathematical fame (P. W. 435) Rebati Babu, a senior pleader of Dacca (P. W. 62) Mr. Sarat Chandra Ghosh, a retired Inspector of Police (P.W. 789), Babu Kali Mohan Sen, a retired Deputy Magistrate, Hiranmay Biswas, a senior pleader and a man of considerable property and position at Dacca, Babu Harendra Kumar Ghose who retired as Sub-divisional Magistrate at Dacca, Mr. N. K. Nag Bar-at-law, Rajendra Kumar Roy, Zamindar and Banker, Rai Saheb Ananda Kumar Ganguli, a retired Assistant surgeon of Dacca, Mr. Manindra Bose, Lecturer Calcutta University who was formerly Head Master of Jaidebpur School, Dr. Debendra Bose, a well-known medical practitioner of

Dacca, Mr. P. C. Gupta, Engineer, and a man of position and property in Calcutta, Mr. Broja Gopal Basak, a large landed proprietor of Dacca, to mention only a few names. They and many others whom I have not named are men of position, grave, elderly people most of them whose evidence on this point there is not the slightest reason to reject. I believe that evidence, but even this evidence need not rest on their credibility alone. In 1917, on the dated 3rd September 1917, more than 3 years before the appearance of the plaintiff, Rani Satyabhama the grand-mother of the Kumars wrote the following letter to the Maharajadhiraj of Burdwan :

Jaidebpur Rajbati.

Bhowal, Dacca

18th Bhadra, 1324.

“To the blessed one

“With my blessing : We never corresponded before but we have known each other for long. I am the widow of the late Rajah Kali Narayan Choudhury, and mother of the late Raja Rajendra Narayan Ray. I had three grand-sons, Kumar Ranendra Narayan Ray, Kumar Ramendra Narayan Ray, Kumar Rabindra Narayan Ray, who were sons of the Rajah my son. Each of the three

grand-sons attained full age, and died an untimely death. Each had married. None of them had any issue, and the family is extinct.

“My eldest grand-son died at his house at Jaidebpur, the 2nd died at Darjeeling and the youngest died at Dacca. The second grand-son went to Darjeeling about 8 years ago, with his wife and her brother. He died there of *rakta-tisar* (diarrhoea with blood).

“A rumour has been current for the last two months that the second Kumar of Bhowal is alive, that after his death he was taken for cremation to a place near a cave, but as at that time occurred heavy rain and storm, he was not cremated, but left there, after his mouth was touched with fire ; thereafter a Sannyasi came with his party and revived him. He is said to be now in their company, indifferent to the world and unwilling to return to world. I could not ascertain where exactly he is ; numerous people are mentioning numerous places. This rumour has arisen in the districts like Dacca, Faridpur, Barisal, Mymensingh, Rangpur, Dinajpour, Comilla etc. Numerous people have been asking me for information on this point and I am at a fix and passing my days weeping.

“From those who went with the late second Kumar to Darjeeling, I came to know that you were at Darjeeling at the time of his death, that you arranged for Tulasi leaves and Ganges water. That is why I am writing to

you whether this account is true. Was the second Kumar's body really cremated? You must know the facts. If you could therefore tell me the real facts so far as you know them I could be somewhat composed. I would not neglect to let me know in such time as suits you. There is nothing more to write".

The defendants themselves rely upon this letter. It states the death as a fact, and the rumour too as a fact. Jyotirmoyee Debi says that the occasion for writing this letter was that a Mouni Sannyasi (a sannyasi vowed to silence) had visited Joydebpur sometime before this letter, and he wrote in answer to an enquiry whether the second Kumar was living some thing that raised hope, and that this did not start the rumour, but made it more strong. It had really begun four months after the second Kumar's supposed death because a certain sannyasi who had come to the Madhab Bari had said some thing. Defendants admit this Sannyasi of 1917, and the consequent rumour, suggest that Jyotirmoyee called this sannyasi the 2nd Kumar which she denied, led evidence to show that the rumour ceased, directly Maharajah Burdwan wrote back on 20.9.17 saying that he had seen a collection of men in the cremation ground at Darjeeling, and was told it was the cremation of the 2nd Kumar, either at dusk or in the morning—he did not

recollect which (Ex. 266). A rumour dies hard, and rarely comes to an abrupt end, and the whole episode of the Mouni Sannyasi of 1917—asking him, for instance, whether the 2nd Kumar was living could not occur, unless there had been a rumour of sorts before though the Rani was mentioning its recent phase, I find that there was in Bhowal a wide-spread rumour that the 2nd Kumar was living, and the question as to his cremation did not arise only after the appearance of the plaintiff.

Going back to the 2nd Kumar's *sradh*, it was a melancholy affair without pomp. It took place on the 18th May and before that, on or about the 16th May Satya Babu went to Calcutta, accompanied by Mukunda Guin, who had gone to Darjeeling as one of the 2nd Kumar's party. He says he went to take legal advice, and also because his mother was ill, and the reason why he needed advice, and sought it with such haste even before the *sradh*, was that the 1st Kumar propounded a deed of management whose object was to exclude his sister from the management, and to give her Rs. 1000 per month. There is no doubt that such a deed was propounded, but its object was to stay off the brother whose attitude had become plain. He had become a peril to the estate, as his own proceedings recorded in his own diary will show. The deed did not go to title, provided for a

figure nearly equivalent to what the estate, in its then involved condition could pay to each of the owners, seeing that Rs. 1100 came to be the allowance of each of the owners even when the Court of Wards took charge in 1911, and remained so for years. The deed soon frizzled out. Satya Babu, upon his return from Calcutta began to plot with Mr. Sen, the Manager, to get hold of the sister. That became possible, as Mr. Sen was then in the fear of an account suit, and an acquittance from the widow would go a great way to stop it. On the 24th September, 1909 he was actually asking for it (Ex. 399 (14)), and on the 11th July 1907 his brother was asking Satya Babu to see that the Kumars "let him off lightly." On 6.8.09 Sen was telling him that he had evidence to meet the charge of embezzlement (see entry under the 6th August, 1909). He had practically ceased to be the Manager in June if not earlier, seeing that he had come to Dacca, settled down in a house here at Sutrapur, adjusting accounts with the help of his clerk, Mon Mohan (P. W. 952) and ceased to be the Manager on the 19th July. In the meantime he and Satya Babu arranged to bring the mother of Satya Babu, so that the 2nd Rani might be separated from the family and brought under Satya Babu's control. It was from the Manager, Mr. Sen, that Satya Babu comes to know the date on which the mother was coming, on the 13th June a house was engaged

at Kalutola. Mr. Sen had sent in his resignation and it had been accepted before the 2nd June (Vide entry under 22nd June) and the mother got into that house but soon removed to a house in Sudderghat.

On the 19th June the 2nd Rani came to this house, after a disgraceful scene at the Dacca station, where Satya tried to drag her away by force, because the family proposed to send her later on the day after her meal, so that he had to be bodily removed by a durwan. It is not necessary to go into all the sordid details. The mother, Satya Babu, and his wife, settled down at Dacca, removing, later, to a house at Nalgola, and the sister began to come backwards and forwards, though it seems that she was reluctant to stay with the mother long. On the 2nd October Satya Babu records "sister still leaning over to the other side". She is unwilling to stay here. When pressed "she keeps silent". When she started coming to Dacca, Bara Kumar, with a delicate consideration for her feelings which Satya Babu could not understand, was himself coming with her, and leaving, as a mark of her rank, a lot of orderlies and maid servants. Satya Babu calls them spies and on one occasion, when the Bara Kumar could not come he writes "Strange he will not be here to guard his brother's widow, lest I

may do some mischief with the estate". (Vide under date 2219). On the 23rd September he is informed that Chhoto Kumar occasionally speaks strong words to the Bara Rani, and he records with evident pleasure : "A family quarrel is ripening on"; and hearing that the Bara Rani and the Chhoto Rani had quarrelled, he writes : "A healthy sign" (17.10.09). He wonders at one place how Indumoyee Debi had managed to get "such a hold on her". Asked why it was necessary to bring his mother he says that she, the sister, could not live alone ; that is to say, could not otherwise be separated from the family. It is perfectly clear that his proceedings, aided by Mr. Sen, were intended to get hold of the sister who was "leaning on the other side" and thus to get hold of the estate while the family, knowing the danger of which he writes made futile efforts to keep him in good humour. They were sending furniture to furnish his house. They were sending beddings. They were sending riding horses, as he wanted to learn riding. They were sending him money. Mr. Needham became Manager on the 1st November 1909. On the 4th November the 2nd Rani had ceased to lean on the other side. On this date she appointed her brother her agent, and on the next day applied to the Insurance Company for

payment of the Rs. 30,000 due on the policy of the 2nd Kumar of which I gave an account before. On the 15th Mr. Needham writes to Bara Kumar inquiring whether, in view of the fact that the policy was joint property—the premia had been paid by the estate—he and the Chhoto Kumar were prepared to forego their share, and if so, he Mr. Needham could draw the money, and place it to the credit of the 2nd Rani, provided he had the papers which were all with her. As the diary shews, Satya Babu had secured the policy, opened correspondence with the Insurance Company, took out a succession certificate, and he admits that the two Kumars did not claim any share, and that he drew the money in Calcutta, some time before Bara Kumar's death, in September 1910. The pretence maintained throughout this trial until the diary was produced that the estate arranged every thing connected with the drawing of this money and that he was only handed the cheque was given up, and there is no doubt whatever that it was he who had arranged for the affidavits of death and identity sent to the Insurance Company with a view to draw the money—the earliest of these affidavits being that of Col. Calvert who deposed in this case in London. That affidavit is an important piece

of document on the question of the death and illness of the Kumar. The evidence of Col. Calvert is that Kumar's people came to him for it, and the other evidence is that he sent it to Mr. Chanda, a retired Deputy Magistrate living at Darjeeling, at the request of one Dr. Sisir Pal who the evidence is still lives at Darjeeling. No body says, not even Rai Saheb Jogendra Nath, that any agent of the estate had been sent to Darjeeling to get Dr. Calvert's affidavit of death. and it is worthy of note that within a few days from the declaration of identity by the plaintiff on the 4th May. before the 10th May, Satya Babu went to the office of the Board of Revenue, and produced copies of the Insurance affidavits which he had been keeping.

The two surviving Kumars were thus doing all they could to keep him in good humour, sending him furniture, money, horses, beddings, and things, foregoing their share in the Rs. 30000 of the Insurance money and conveying to him on 16. 8. 10 by way of a miras which was as good as a sale, with a quit rent more than bigha of land in this town for a nominal selami of Rs. 1500. For this land Satya Babu had got an offer of Rs. 14, 500. in 1913 (Ex. 77) and even the Rs. 1500 came out of his sister's money ; before the diary was disclosed, all this was urged as a mark of the

Kumar's affection for Satya Babu. I see in all this, as any one reading the diary would, fear of a disruption of the family. Bara Kumar was a cavalier sort of man then about 27, fond of pleasure and drink but no match for Satya Babu, younger than he, but with a mind of the kind that saw in the quarrel between the Ranis "a healthy sign" and in death an opportunity.

This last remark is justified by what I have hitherto described. and more, by what followed. After getting hold of the sister, he began a harassing demand for money in her name. On the 4th November he was demanding Rs. 8000. in January following, her allowance was fixed at Rs. 1100 per month according to the evidence of Mon Mohan, but it might well rest on her own admission in her petition to the Board of Revenue dated 25. 5. 11 that she was receiving Rs. 1100 since her husband's death. On the 21st April, 1910 she with her brother left for Calcutta (Ex. 64). She was ailing—it was some trouble in her legs. Mr. Needham proposed treatment by Dr. Hall, but she went, and though before her departure Mr. Needham had paid her Rs. 800 (Ex. 62). Satya Babu was demanding more, directly he reached Calcutta, seeing that on the 27. April Mr. Needham was proposing to send Rs. 500 more (Ex. 63). At Calcutta she was putting up at a

rented house No. 30 Harrison Road, was being treated by Dr. Brown, recovered, and came back to her brother's house at Dacca on 14. 7. 10 (Ex. 307 a letter of the 2nd Rani. On the 6. 8. 10 Satya got the Dacca property I mentioned. She stayed on at Dacca went to Jaidebpur for a few days when Bara Kumar lay dying, returned after the death which took place on the 14th September 1910. To Dacca stayed on till about the end of Chaitra (1st April) and then left for Calcutta for good. She never returned to Dacca until 1934. The Bara Rani too had left, in Kartik before i. e. nearly two months after her husband's death, never to return.

She, 2nd Rani settled down in Calcutta at a rented house 819 Harrison Road. Her mother and her brother and his wife were the family of which she became a member. She was getting Rs. 1100 per month. She had got Rs. 30000, the Life Insurance money. Her brother admits that between November 1909 and the 31st March 1911 she had drawn Rs. 36000, not including the Insurance money, but including the cost of the 2nd Kumar's sradh which was Rs. 2000. She went on getting Rs. 1100 per month till her mother's death in Pous 1320. That is to say she had got, if you add the Rs. 30000 of the Insurance, or her brother had got a lac of rupees, and yet her brother talks

of her mother leaving to him Rs. 40,000 out of her money, as though she, a dependant all her life, with her children on her brothers even during coverture had any money to leave. There is no sort of accounts or documentary evidence of course, and as inconvenient questions may be asked about a succession certificate, Satya Babu says that the mother endorsed to her what securities she had before her death. If she did or if she left any money it was her daughter's.

She went to Calcutta for good in April 1911, and almost immediately after her departure, her share of the estate was taken charge of by the Court of Wards. This happened after she had gone to Calcutta for good and not before, as her pleading falsely says. It was, I expect, a kind of bomb-shell the news was sent by telegram by Mr Needham as Satya Babu says, but whether it was bomb-shell or not, the sister by her solicitors instructed by Satya Babu, Messrs. Orr Dignam and Co. petitioned the Honourable the Board of Revenue for releasing her estate, and this petition dated 25. 5. 11. was argued by Sir S. P. Sinha (later, Lord Sinha) but without success. Her share remained in charge of the Court of Wards and has remained so till to-day.

The share of the 3rd Kumar went under the-

Court of Wards in May 1911, and the share of the eldest Rani in May 1912 directly a probate case was over.

The entire estate thus passed into the charge of the Court of Wards in 1912.

The 3rd Kumar, left the sole surviving Kumar, was now about 26. His life was coming to a close and latterly, in 1913, he was staying generally in the house at Nalgola. Here, on the 15th September 1913 after an illness that had lasted eighteen days he died. His three sisters, the grand mother and aunt, Kripamoyee Debi were then in the house. These left the house, almost directly the death occurred and the 3rd Rani in obvious anxiety to prove enmity, says that these ladies left, leaving her, then ill, alone and in a heartless manner, and she adds that she too left the house that very day on the advice of the Civil Surgeon. She admits that the sisters were on good terms with her till her husband's death, and what really happened upon the death of the Chhoto Kumar is plain. She too had a batch of brothers, poor and ignorant on her own account, and they got hold of her,—removed her to a hired house at Dacca, and then to another house and then to Calcutta. The Collector and Mr. Marr. Secy. to the Board of Revenue, tried to induce her to return to Dacca but she would not

come, propounded in one of her letters to the Hon'ble Board of Revenue a will which never saw the light of day, and went about or was taken about from one place to another, until four years after, she returned to Dacca, took up her abode at the Dacca house and on the 16th Jaista 1326 (30. 5. 1919) she adopted the son of her brother, Kumud.

In the meantime the sisters who left the Rajbari had settled down. They left the Rajbari at Nalgola on the day the 3rd Kumar died. They never entered the Rajbari again whether the house at Dacca, or the Rajbari at Jaidebpur. They lived for sometimes at Dacca, and there went to Jaidebpur. Indumoyee began to live at her own house constructed at Chakkar, a quarter of Jaidebpur, during the life time of Bara Kumar. Jyotirmoyee Debi's house at the same place was then under construction. She left Dacca on the 29th Falgun. She was living after the 3rd Kumar's death in a rented house at Dacca, put up till Baisak in the house of Kripamoyee, and then occupied her own house in April 1914. Between the house of Indumoyee Devi and that of Jyotirmoyee Debi is the house of the youngest sister, Tarinmoyee. The sisters settled down here. This account is given by Jyotirmoyee Debi, and the account of the 3rd Rani so far as it goes

confirms it. She does not say nor any body called on the defendants' side, not even Rai Saheb or Phani Babu (D.W. 92) that the sisters entered on the Raj after the death of the 3rd Kumar. On the other hand there is evidence that they were asked by the Collector to come, and live there which she declined on the ground that the *bou's* did not live there. The statement in the 3rd Rani's pleading that the sisters were turned out of the Rajbari by the Court of Wards is utterly untrue. The fact is that the eldest sister had already made her house at Chakkar, and the second had commenced making it even before the 3rd Kumar's death. The event only hastened what must have been in contemplation, before. The Chhoto Rani is perfectly clear that the sisters were on the best of terms with her, and their brother till his death, and her own letters shew how affectionate these terms were she was writing to Indumoyee just as one writes to a mother-in-law, but with more affection (Ex. 320, 321, 322, 326, 327, 328). After the death of her husband she was spirited away, so to speak by her brothers. She did not go to the sradh of the 3rd Kumar which was held at Jaidebpur, and the sisters did not go to it because apparently they were not asked, and the brothers had become the Kartas. The Chhoto.

Rani and the sisters did not meet again ; Chhoto Rani was away—until the adoption and then when she and Indumoyee met, they wept. (vide 3rd Rani's deposition). There is nothing in the suggestion that she and her sister-in-law were on bad terms. There was no opportunity to get into bad terms and there was suggestion, backed by letters put to her, that they corresponded even during her absence in Calcutta or elsewhere. She looked at those letters, read them through, turned them over again and again, and ended by denying them admitting a resemblance. If the point were of any importance, I would I compare them with her admitted handwriting, but it is enough to say that there is no evidence, neither conduct nor anything else, to shew that the sisters were on bad terms with her nor is there any thing to shew that these were cordial.

After the death of the 3rd Kumar, the sisters settled down at Chakkar, each in a house of her own—the three houses in a line on the same spot. Kripamoyee Debi the aunt, was so moved by the death that she made her Will on the 3rd October 1913, and in Aghran following left for Benares never to return. With her went Satya Bhama Debi, the grand-mother after executing, on the

11th October a Will of her own. Kripamoyee never returned. Satya Bhama returned and was living at Jaidebpur at the time the plaintiff came in 1921. Kripamoyee died at Benares on the 27th April 1920.

The 1st, and the 2nd Rani were living in Calcutta, and had little concern with the events at home. The 1st Rani was living at 8, Madhu Gupta Lane, her father's home. Her last letter, if this be the last but there is no evidence of any other—was sent to Jyotirmoyee Debi on the 6th Asar 1320 i. e. June 1913, before the Chhota Kumar's death. It is a stiffish sort of letter apparently in response to a request that the Court of Wards, then in charge, might be asked to pay the cost of Buddhu's marriage which had taken place. This lady lived at this house till a date in 1925 when she removed to 112, Ripon Street where she is now living.

The 2nd Rani when she went to Calcutta with her brother in 1911, settled down with her brother, and her mother at 8/9 Harrison Road a rented house. In 1914 she removed to 19, Landsdown Road where she still resides.

Until 1920 the terms of the sisters-in-law with these two Rani's were by no means unfriendly. Bara

Rani, according to Jyotirmoyee Debi was cold and distant but there was no occasion for a quarrel. The 2nd Rani was more cordial. She does not deny what she says supports the account which Jyotirmoyee Debi gives of their relations. They would correspond and one of the letters has been produced by the defendants. In is the Ex. z (32) dated 25.3.16 written by Jyotirmoyee Debi from Benares to the 2nd Rani. It is in answer to a letter of the Rani, refers to other letters she had written, invites her to come to Benares, and stay at the house she was living in, refers to her as a token of her dead brother, mentions the nurse, Aloka, says that the aunt, Kripamoyee had expressed a desire to see her and so forth—in short it is a sort of letter that might pass between two sisters-in-law on usual terms, not without a touch of affection. Apart from correspondence this lady, Jyotirmoyee Debi would pay her visits in Calcutta, if she happened to be there, or if she happened to pass through on her way to Benares where she was frequently going and staying with Kripamoyee Debi. On one occasion she, the 2nd Rani presented to Buddhu's wife (Jyotirmoyee's daughter-in-law) some trinkets; had kept them ready against her visit, as the 2nd Rani says and on another occasion she gave her a pair of bracelets, not secretly in a bath-

room, for fear of Satya Babu, as Jyotirmoyee Debi says, but openly. She does not deny that Buddhu would call at her house in Calcutta, that on one occasion she gave him some of the old clothes of the 2nd Kumar, and some of these have been produced at the trial. It is not disputed that these belonged to the 2nd Kumar and they will be of value on the question of identity. She came to see Buddhu on the occasion he went to Calcutta for treatment and paid some money for his treatment. In a word, Jyotirmoyee Debi was, till the arrival of the plaintiff, on excellent terms with this Rani and nobody suggests anything to the contrary. Considering that the whole of the account given by Jyotirmoyee Debi on this point is undisputed except that one present was secretly made for fear of Satya Babu, I see no reason to doubt her evidence that her relations with the Bara Rani were correct, but not cordial; and that once, before the arrival of the plaintiff, she, Bara Rani tried to stop or question the allowance she was receiving under her father's deed. Looking to the cross examination of the Bara Rani one sees no suggestion to the contrary; and looking to numerous letters of the Bara Rani that have been put in by the defence—I will come to them later—she does not seem to be a lady who could yield

an inch, so far as her rights went. If therefore Jyotirmoyee Debi came in 1921 to support an impostor, and inflict a terrible blow upon the 2nd Rani by foisting a husband upon her brother's widow and indirectly another blow to the 3rd Rani by imperilling her son's reversion, if not the adoption itself, some motive other than enmity with the Ranis must be found. The defendants' case is that the motive, was, and is, love of gain as the adoption by the 3rd Rani dashed all the hopes of the sisters whose sons till then were the reversioners under the Hindu Law. It is not known what exact income the sisters had when they set up houses for themselves, but each certainly had the annuity of Rs. 2400 or Rs. 200 per month, under the father's deed, and probably some thing more as Buddhu, the son of Jyotirmoyee Debi was keeping a carriage in 1921, and in a village even Rs. 200, though not affluence goes a great way. It was nothing however compared to the chance of succession to the Bhowal Raj.

As to the Ranis the Chhoto Rani was living at Dacca as I said. The 1st Rani was also living at Calcutta, and they were fast becoming strangers to Bhowal. In 1913 the 2nd Rani's mother died—she died

in Pous, i. e. December or January. Apart from the money she had recieved from the estate before she left Dacca for good that was nearly a lac—she began to receive from April 1911, Rs 1100 per month. The figure rose to Rs. 2500 in 1913 About 1915 the figure rose to Rs. 4000, and two years after, to Rs 5000. In 1919 it became Rs. 7000 per month, and this she has been receiving since that year. Apart from these she got extras or surpluses, and these on her own account aggregated to $3\frac{1}{2}$ or 4 lacs. This account I collect from the 2nd Rani's own testimony, and not from any papers as no accounts have been produced but Satya Babu gives the figures and the periods of their currency even more vaguely than his sister, apparently to keep up the pretence that the sister knows more. She knows the figures, but does not know what becomes of the money. She lives at 19, Landsdown Road which she says is her brother's property. The money that went to buy and improve it "is my gift to my brother", she says. She does not know its amount and her brother comes and says that this property which is his, cost more than 2 lacs of rupees. It is in his name. Other valuable real properties have been bought, all in Satya Babu's name and the Rani says that these were bought, they cost more than a lac, by the brother with his own money. The

brother comes and says that too, and as to the 19 Lands-down Road, he says that also was bought with his own money, though the Rani made a contribution. All these were purchased after his sister became a widow and she has received till now on her own account more than 19 lacs of rupees. She has not even a banking account. She never paid income tax. There are no accounts or papers of any kind, although you cannot handle such sums without papers of some sort, and I do not believe, looking to Indian habits, that there are no accounts. "I keep my own money", she says "have been doing it since my husband's death. There is an iron chest upstairs. I keep the key". In short, hoarding, as bank or investment means income tax. In cross-examination she put some securities into this iron safe. Her brother came to depose after her and talked vaguely of her having a banking account that closed and about her paying income tax not as an assessee, but on the interest on securities, and about a banking account being opened after the trial began. It is impossible that possession of such a large amount of money would attract no documents in her name, and if these existed, they would be produced. Asked whether Satya Babu ever earned any money the Rani talks of his dealing

in shares, adds that she has no personal knowledge and the brother come and says that the valuable properties in Calcutta were, with two exceptions purchased with his own money whose origin is Rs. 40,000 which he got from his mother, and that he started buying and selling shares in 1910, with this as capital and has made his fortune. His mother had no money to give unless one accepts his bare word for it, seeing that she was a dependant with her children on her brothers even during her marriage, and looking to her letters which tell of poverty in unmistakeable terms, and if she left any money, it was her daughter's money in her hands. On Satya Babu's own account more than a lac of Rupees had come into her hand from the daughter's estate in 1913, if it had not come into Satya Babu's hands. And Satya Babu does not deny that the whole expenditure of the house is borne by his sister, and even the two cars are in his name. It is perfectly clear that the whole income of the 2nd Rani has passed into her brother's pocket. She says that "her will is her brother's will", but looking to her condition—she could not produce a scrap of paper to shew her control over any part of her princely income—the converse is undoubtedly the truth.

The year 1920 arrived. Kripamoyee died at Benares on the 27th April. Indumoyee, the eldest of the Kumars, died on the 29th August. Her husband and her children who survived her were living in her house. Jyotirmoyee Debi was living with her son, and daughter at her house, and the grand-mother with her more often than at the lonely Rajbari where she had a wing, as I said to live in. The death of the 2nd Kumar was an accepted fact. His sradh had taken place. The widow had succeeded. The old ladies had made wills reciting that the family was extinct. The Court of wards had taken possession on that assumption. The estate, properly administered, had been cleared off debt, and the old abuses, the illegal cesses which used to be in vogue (P. W. 155, 190, 176, Ex. D.) had ceased and the hangers-on had vanished. The 2nd Kumar's share of the estate held by his widow, but was being really enjoyed by her brother. All that remained of the 2nd Kumar was his memory kept alive at the Rajbari by the incense in his bed-room lighted at dusk by his old servant, Ananda Khansama, and by the rumour that he was alive and wandering about with Sannyasis. No body

believed in that rumour. There was no conduct which it produced ; and when Joyotirmoyee Debi says that she believed it, she is confusing belief with hope, such as one has of the next world, or such as one has of a dear one lost in a shipwreck. Such a person would enquire of sailors. So did she or Kripamoyee Debi enquired of Sannyasis, but there was no real belief, and even If there were, it is of no consequence as proof.

This was the position of affairs when the Sannyasi, the plaintiff, appeared at Dacca.

The exact date of his arrival is not known. It was on a day in December 1920 or January 1921. The Plaintiff cannot give the exact date, but it is possible to fix it approximately upon undisputed evidence. The plaintiff gives an account of his wanderings after the incident at Darjeeling until he arrived at a place, called Baraho Chhatra in Nepal. That account will have to be stated in full and will require close scrutiny, but at this point of the narrative, all that is necessary to say is that he says that it was at Baraho Chhatra that he recollected not who he was, but that his home was at Dacca. He was still in the company of the four Sandhus including his Guru Dharma

Das Naga, but at this point, he was asked to go home. At Baraho-Chhatra I recollected my home was at Dacca. I told my Guru this. He said—Go, your time has come. “Go back to your home”. He asked where he could find him again and was told he would be found at Hardwar, as he had understood from what the Guru had said that if he could conquer the “Maya” (love of the world) he would be initiated into Sannyas. He parted from the Sannyasis, and set out alone, passed through various places, and arrived at Dacca. He reached Dacca railway station at about 12 P. M. or 1 A. M., passed the night there. As I got down at the station, ‘I recollected’ says he, ‘I had come and gone about here many a time’. He passed the night at the station and found his way to the Sudder ghat, crossed to a chur on the far side of the river, returned to this side of the river at 10 A. M. and sat on the Buckland Bund, in front of the gate of Rup Babu’s house.

So much must rest upon his own testimony, if it could be accepted, after examining the rest of the account he has given of his *niruddesh* (the period of his disappearance). From the point he took his seat on

the Buckland Bund, the narrative, except where I otherwise say so, is common ground. He sat there day and night, shine or rain, for 3 or 4 months on end till about the 5th April, or a few days before the expiry of Chaitra 1327.

It is agreed that about a week before the end of Chaitra—he went to Kasimpur, and the defendants fix the Baruni day as the day on which he was on his way to Kasimpur. The Plaintiff does not admit their account of the journey, but its date is about the 5th April. If therefore the plaintiff stayed on the Buckland Bund for 3 or 4 months as his own witnesses say he must have arrived at Dacca on a day in December, as Mr. Needham stated in his report Ex. 59.

For some four months the plaintiff sat here day and night. He looked a Sannyasi. He was naked, except for a lengti. He had a fairly long beard, and his hair matted into a mass of cords fell behind his back, reaching down to his knees (see photo Ex. A (19)). He sat facing a burning dhuni, his body besmeared, head to foot, with ashes. Hundreds of people who walk up and down the Buckland Bund must have seen him there. One of these was Babu Debabrata Mukherjee, a Subordinate

Judge, since retired, but then posted at Dacca. He lived a few minutes from the Bund, was in the habit of walking on the Bund morning and evening. He saw the Sannyasi every day during the period of his stay on this Bund which he says was 2 or 4 months. He was examined on commission for the defendants, and his description of the Sanyasi, as he sat there on the Bund, taken with the photo taken, not then, but later, when he was still in *lengti* gives a good and correct picture of the man as he then was. 'I felt curious', says Mr. Mukherjee 'how this beautiful fair man could sit at the same place, rain or shine, day and night'. "He struck me first by his fine and noble stature," says he "and I noticed his appearance every day as he sat at the same place even when I passed alone at noon." One night, it was drizzling, a strong gale blowing, and it was very cold. Mr. Mukherjee went out—it was about 2-30 or 3 A. M. to see what was happening to the Sadhu. The *dhuni* was burning, and the Sadhu sat, calm and unconcerned. I do not remember to have seen such a handsome, fair, *Jatadhari*—Sannyasi at Dacca.

Mr. Mukherjee spoke to the Sadhu '2 or 4' times which is Bengalee way of saying 3 or 4 times. On one occasion he found a lot of men near him

and he asked : How could you bear sun and rain, cold and heat in this fashion ? The Shadu pointed to a boy about 10 or 11, and said in Hindi.

Jab ham-etna bara tha hamara muluk Punjab-chhor dis aur-maha—asia ho gia. Haika bangla mulluka pani bahut kharap hai. And he held, his head and said. Sir dukhata hai a Jaga kharap hai" (and when I was his age, I left my province, the Punjab, and it is the result of habit. The climate of Bengal is very bad. My head aches. The place is bad).

As far as he recollects, Mr. Mukherjee did not ask him his name, nor where his home was. He did not remember, until a certain statement was shewn to him by the party calling him, whether the Shadhu had said what beliefs he professed or who his Guru was. The statement shewn to him was a statement he had made before Mr. Romes Chandra Dutta, a Deputy Magistrate at Dacca on the 26th May 1921. At that date plaintiff was at Jaidebpnr. He had declared or he is said to have declared his identity, on the 4th May. On the 26th May the controversy had arisen on what exact date it had arisen would be discussed below, and Mr. Mukherjee when he was making his statement was speaking to words spoken months before and in a non-judicial inquiry

about which I will have to say a great deal below. The statement admitted by the Commissioner could not be used to corroborate him, nor to refresh his memory, looking to—section 157 and 159 of the Evidence Act. In any case he does not remember even after seeing it whether the plaintiff had said that he was a follower of Nanak. He recollected after seeing it, that the Sadhu said : I have neither father nor mother. What do I care ?

In point of fact he had said before :

“I remember that on another occasion I heard the Sadhu telling some up-country-man : what can you give to me ? I have left my father, mother and wife. I do not even require a house to live in”.

On this being put to him he admits that is what he had said, and that was true, and that his present statement, about the Sadhu saying that he had no father or mother is a mistake, though that will suit the defendants, looking to the case they have made at the trial about the antecedents of the Sadhu. Words are fleeting, and their memory no less so, unless there is occasion for intent attention. I would go into this matter when I come to deal with the topics

as to whether the plaintiff is a Punjabi or Hindusthani a large topic, but at this stage it is enough to say that if the plaintiff spoke the words to which Mr. Mukherjee has deposed—he professes to give the exact words he was not talking Punjabi or what has been called unintelligible Hindi—which is the defendant's case, but Hindi, not even good Urdu, but Behari Hindi of the easiest possible description. Mr. Mukherjee himself talks Hindi as he says, like his mother-tongue, the Hindi of Patna, and his evidence as to the kind of Hindi the Sadhu spoke might be fully relied upon. Mr. Mukherjee adds that the Sadhu spoke to other people as well in Hindi, and these people were Bengalees, and these talked in Bengali, and one or two of them would ask the Sannyasi for medicine but he does not remember whether the Sadhu gave any. The case of the defendants', as put to many witnesses including Jyotirmoyee Debi, is that the plaintiff could not understand or speak Bengali in May when he declared his identity, but talked a peculiar Hindusthani which according to Atul Babu, examined on commission, nobody could understand. (see case put to Kritiratna P. W. 87 and Jyotirmoyee Debi P. W. 660).

The plaintiff admits that at Buckland Bund he was talking Hindi to people who accosted him. He says.

Lots of people came to me there. They would say among themselves 'This is Bhowal Kumar'. 'He is Mejo Kumar.' Among those who came were many whom I knew. I spoke to them, useless talks these. They would talk in Bengali, and I would talk in Hindi. I talked in Hindi, as my Guru had forbidden me to disclose my identity".

In corss-examination he says—"I first knew I was a Bengalee when I reached Jaidebpur—I mean when I reached Dacca after that I remember things—at Dacca railway stations things began to look familiar to me, and I knew of course I was a Bengalee. It struck me I knew the place. I never came before to Dacca during the time I was a Sannyasi. At the railway station I did not know, did not remember who I was—that I was a Rajah's son.

"Next day I sat on the Buckland Bund. I could know the people passing. Their names I recollected. I could know cattle and men and things from before my arrival at Dacca. I did not know I was a Rajah's son".

Then saying that he had stayed at Buckland Bund for 3 months in open air he goes on :

Gradually I remembered I belonged to these parts.

Q. Did you remember you were Mejo Kumar then ?

A. I don't remember. (Question repeated).

I knew people passing me, and I recollected I was the Mejo Kumar. This I recollected from the first, people were saying, 'He is the Bhowal Kumar'. You thought then of breaking the Maya. You thought it was going to be a difficult task ?

A. No.

"My old memory returned—my home, my relations. This was at Buckland Bund. When I went to Kasimpur I had recollected bari, ghar, duar, atmia swajan (my home and my people).

Q. Then when you went to Jaidebpur you had remembered all, only wanted to break the Maya ?

4. Yes. That was Guru's order.

Ne body reminded me of things then. As I saw I remembered.

The account looks incredible, but the case of

the plaintiff is that upon his return to consciousness after the Darjeeling incident he found himself in the company of four Naga Sannyasis, but his memory as to who he was gone ; that there was a stage, much later, when vague memories out of which nothing definite emerged would trouble him, but it was at Baroha-Chhatra that he recollected that his home was at Dacca, but nothing more, and then after his arrival at Dacca his memory gradually returned. His story will have to be given and examined in great detail, and the Court will have to consider the possibility of such a case—of amnesia—or morbid loss of memory for nearly 12 years. On this point the Court will have to consider the opinion of the experts called, the authorities cited, the observed cases in books, the laws, if any, which such cases disclose, with due regard to the ability of the plaintiff to analyse and state mental processes, normal or abnormal. The question is not academic nor the phenomenon a mystery. It has been observed, named, classified, and intensively studied in the shell-shock cases after the war. That it is possible will not prove that it had occurred but supposing that proof comes, or supposing it is otherwise proved that the plaintiff is the Kumar himself, it could not be

displaced on the short ground that such loss of memory, is as impossible as coming to life after death.

Leaving aside this controversy for the moment, I return to the Buckland Bund, and to the facts that are admitted or indisputable, or easily ascertainable though disputed, and I shall mention, as I go on, the points as to which dispute exists.

The plaintiff was in the Buckland Bund for three months or so, seen by hundreds of people, attracting attention by his figure, his hair, his calling.

He was speaking Hindi to such people as addressed him. People would ask him for medicines, as people do, when they see a Sannyasi, and he would give them some times a pinch of ash. He denies that he ever gave any amulet. He was not cross-examined on the point. He would more often give elachis.

Debabrata Babu, the Subordinate Judge (retired) did not know the Raj family, or the Kumars. The plaintiff has called 21 witnesses who say that they knew the Kumar, and who say they saw the plaintiff on the Buckland Bund at this period. The

case of the defendants is that the plaintiff was not recognised, or suspected as the 2nd Kumar, by any body on the Buckland Bund, and their case is that no body had said, or suspected, that he was the 2nd Kumar until his alleged declaration of identity on the 4th May 1921 at the house of Jyotirmoyee Debi at Jaidebpur—he looked utterly different, could not speak or understand a word of Bengalee, and talked an unintelligible gibberish which nobody could understand. The witnesses who depose for the plaintiff on the part of the case associated with the Buckland Bund say that they suspected, as they saw the plaintiff, that he was the 2nd Kumar, or that thought crossed their mind (P. W. 326, 358, 437, 472, 558, 559, 599, 635, 634, 666, 683, 779, 858, 888, 893, 919). One witness. There are some to whom this thought did not occur, but it seems that they did not know the Kumar very well had only seen him casually or in streets and the like. The rest of the account they give is true, knew the 2nd Kumar or knew him by face at all events, some of them

and they say that when they saw this plaintiff on the Buckland Bund, they suspected that he was the Kumar, but did not recognise him. That the plaintiff was being suspected as the 2nd Kumar when he was at the Buckland Bund will prove nothing on the question of identity, but that he was being so suspected need not rest upon the testimony of the plaintiff's witnesses alone. When the plaintiff was staying on the Buckland Bund Mr. Meyer, then Manager of the Nawab Estate was staying at Wise House on the Buckland Bund. He has been examined for the defendants. He says that he saw this Sadhu on many occasions on the Buckland Bund. He says he took particular notice of him for one reason. That reason was that a man came, and told him that he had heard that the Sadhu was calling himself the 2nd Kumar. He says that after this conversation, "I took particular care, during my walks on the Buckland Bund and elsewhere, to notice him, and I was perfectly satisfied that he was an impostor". It is plain that even when he was in the Buckland Bund it was being said, or suspected,

that he was the 2nd Kumar. The witnesses, who say this told the truth and corroborate what the plaintiff has said. It is worthy of note that the defendants though contesting with the utmost vehemence, and thus consistently with the case that the plaintiff looks utterly different, that on the Buckland Bund he was suspected to be the 2nd Kumar, could not produce a single witness from Dacca who had seen him at this stage, except Debabrata Babu who did not know the Kumar. Though numerous citizens of Dacca must have seen him, and must still recollect him, in view of the sensation that followed, the defendants could get no body to depose on this point except a tenant, Satis Mitra D. W. 124 who does not belong to Dacca. I doubt, looking to his evidence, whether he knew the Kumar at all, or saw the plaintiff at Buckland Bund.

There is no evidence that any one of the family saw the plaintiff when he was at Buckland Bund, except Budhu who went one day, with Babu Rames Chaudhuri, and Bhulu Babu alias Atul Prosad of Kasimpur, to see him, but did not recognise him

though he said, as did Atul Babu, that the man looked like the 2nd Kumar. This, however, is not admitted by the defendants. That he was being suspected as the Kumar on the Buckland Bund does not prove his identity but lends some support to the rumour, otherwise found, that he was living and suggests a degree of resemblance. One minded to expose an impostor would I imagine, concede rumour, and a degree of resemblance to explain the wonderful phenomenon that was going to happen-wonderful on the supposition that the plaintiff was not the Kumar. But the defendants conceded neither, and called witness after witness to prove that the rumour was not a fact and the plaintiff looked utterly different, so different that no one could possibly mistake the one for the other, even if there were not the other thing, that he could not speak or understand Bengali.

Now about the 5th April the plaintiff was taken to Kasimpur. There is a question as to who had taken him and the plaintiff says that he was taken to

Kasimpur by Babu Atul Prosad Roy Chaudhuri, Zaminder of Kasimpur, a place not far from Jaidebpur. You go from Jaidebpur to Kodda, some 4 miles, cross the Torag, and then go about 2 miles to get to Kasimpur, the seat of the Zaminders of that place of whom Atul Babu is one. The family was well-known to the Bhowal family, and the 2nd Kumar and Atul Babu knew each other quite well. The plaintiff says that Atul Babu took him to Kasimpur, as he had suspected him as Mejo Kumar, that he stayed at Kasimpur for 5 or 6 days, and was then sent to Jaidebpur on an elephant. There is no question that the plaintiff had gone to Kasimpur from Buckland Bund. There is no question, or rather there was no question until the defendants began that the plaintiff arrived at Jaidebpur, on the 30th Chaitra 1328. After the defendants began they placed the arrival on the last day of Chaitra supposing all the time, as I shall shew below, that the 30th was the last date but Chaitra that year had 31 days and this mistake exposed a transaction laid on the day following the plaintiff's visit. That would not be intelli-

gible until I come to this point but I should now deal with what happened at Kasimpur.

Now Bhulu Babu (Atul Prosad) denies that he had taken the plaintiff to Kasimpur himself. He says that he caused him to be taken to Kasimpur by an officer not because he was suspected as the 2nd Kumar, but because his uncle, Babu Saroda Prosad Roy Choudhuri, the head of the family, had no son, and he wanted the Sannyasi to perform a Putresti Jajna, which means a religious ceremony or sacrifice supposed to bring a son. He admits that he sent him, after the Sannyasi said that he knew nothing of Putresti Jajna to Jaidebpur, and that, on an elephant, as Raisaheb Jogendra Nath Banerjee, now an officer of the Court of Wards, and formerly, as I said, Secretary to Bhowal Raj, was fond of Sannyasis, as he was, and they used to exchange good Sannyasis. One some times laughs over the side issues of the gravest affair, and this is one of them. Babu Atul Prosad, though involved in debt, seeing that his

house at Dacca has been attached before judgment, undoubtedly knew the family, and belongs to an old zaminder family. He is comparatively young—he was 42 when he deposed on commission, and evidence was given by the plaintiff to shew that he was well able to come to Court to depose when the trial was going on. He was not called to Court, nor his evidence tendered, until towards the close when a case for the reception arose. A person came into the box, and said that he was a doctor, that Atul Babu was ill, and had left for Calcutta. The doctor, it turned out, was his gomasta, and but the fact that he had left jurisdiction remained, and that let in the evidence. In short he made a case for the reception of his evidence by running away. He had good reason to run away. He was one of the ten witnesses examined by the defendants on the question of identity—they belonged to Dacca district. None of the 'commission witnesses could adhere to the case then made on certain points without damaging the case that came to be made during the trial, to meet the exigencies

that arose from time to time. This Atul Babu, for instance, gave a schedule of the points of difference between the plaintiff and the 2nd Kumar, and one point of difference then was that the Kumar's hair was brown, but the plaintiff's hair is black. Now the plaintiff's hair is not black, but brownish, dark with a glint of red, as every body could see, and so far removed from black that Mr. Lindsay who saw it in May 1921 was impressed, as he says, by his "beautiful skin" and "golden-brown hair." Consistently with Atul Babu's black the ten Lahore witnesses said Mal Singh's hair, the plaintiff is said to be Mal Singh of Aujla, was black. After attempts by learned counsel to save this black by the theory, put to various witnesses, that neglect browned hair, the case that eventually came to be made was that the plaintiff resembles the 2nd Kumar in nothing, except in the colour of his hair. Atul Babu could not come and face the Court and stick to his black, a case deliberately made, in the schedule of differences, as will appear below. This is only an illustration, but the commission evidence has served to detect after

thoughts on various points, and this particular witness's evidence on nearly every point contains sure marks of falsehood, as will appear when I come to examine it. On the present point he admits he sent for the Sannyasi. The officer who took in to Kasimpur has not been called. He admits he sent the Sannyasi to Jaidebpur. He admits he went to Jyotirmoyee Debi's house when later the plaintiff was staying there in May 1921. He admits he went to the house at Dacca where the plaintiff came, still later, to stay. He was going so often to this house that a pleader who is his neighbour at Dacca asked why he of all people should move so prominently for the Sadhu, seeing that he had been declared an impostor by Government, and his answer was that the Sadhu was the Kumar himself (P. W. 1032, Bhuban, Mohan Pait). His uncle Sarada Babu the head of the Kasimpur family, was at Kasimpur when the plaintiff went there. He was summoned by the plaintiff but did not come, and the defendants did not venture to call him, though his wife's brother,

Babu Birendra Bose, a pleader, terminated by petition his appointment as a pleader for the plaintiff, and quietly went over to the other side, sitting among Mr. Chaudhuri's juniors though it transpired during argument that he had not filed vakalat-nama. I accept the evidence that this Atul Babu did come to see the Sadhu on the Buckland Bund, and that it was he who took him to Kasimpur (P. W. 666), as still later, he took him to Jaidebpur from Dacca, Mr. Needham, the Manager of Bhowal Estate in 1921 admitted in his report, Ex. 59. One witness, Hemendra Babu (P. W. 437) actually saw him take him away from Buckland Bund on a day in Chaitra at about 4 P. M. If he is making a mistake about the month, it will fit a second occasion with which I shall deal, but not the journey in Chaitra seeing that the plaintiff reached Kasimpur at about 6 P. M. ; but even as the evidence is it fits the occasion in Chaitra, if the hour is wrong, or if he was taken to Atul Babu's house, at Dacca, and the journey took place the next day.

So absurd is this tale of 'putresti-jajna' and the exchange of Sanyasis that brought the plaintiff to Jaidebpur that the defendants tried another tale, after they began. Rai Saheb Jogendra who, till a date in 1934, was the defendants' officer at Jaidebpur, was the principal tadbirkars for this case until he was dismissed after the attempt made by his son on His Excellency Sir John Anderson. He has made a petition for re-instatement, which is pending, and some of his amazing tadbirs for this case will be described below. This witness comes, and says, that he saw the plaintiff on his way to Kasimpur on an elephant on the Baruni fair day (which fell that year on the 5th April) and that he was in the company of Mr. Thomas Ranjan, a Sub-deputy Collector (dead), and an officer of Kasimpur (not called), and was told by Mr. Thomas that he was being taken to treat Saroda Babu's wife-not to perform a jajna but to treat her (chikitsa). He asked that the Sadhu should be sent to Jaidebpur on his way back. He throws in also Budhu, the Kumar's nephew, as present then, with an eye to the case that he had not recognised him. This case was not put to the plaintiff. It never occurred to this tadbirkar to tell it to defendants' lawyers before, and I do not believe a word of it, despite Mr. Mohini Chakraborty, the Assistant Manager, who as will appear below, was prepared to speak to other transaction which I am going to come and which are demonstrably untrue.

I find that the plaintiff told the truth when said that Atul Babu took him to Kasimpur from the Buckland Bund what took place there is disputed. There is the account of the plaintiff on one side, and that of Atul Babu on the other, for I doubt whether the only other witness, P.W.857 was there, seeing that he times the plaintiff's arrival at 11 or 12 A.M. His evidence excludes the

suggestion that he was recognised by any body at Kasimpur, seeing that the plaintiff lived here too under a tree, after meeting— Saroda Babu and the plaintiff's former statement in his memorial to the Hon'ble Board of Revenue prying for an inquiry into his matter, that he was recognised at Kasimpur, and sent to Jaidebpur with a large retinue, as a long lost heir is all nonsense, and untrue. Nothing need rest upon his testimony so long as the fact remains that he was taken to Kasimpur, and sent from there to Jaidebpur, and the reason of this was not putrestijagna or exchange of Sanyasis, but the reason which induced Mr Meyer to have a close look at the plaintiff at the Buckland Bund. Atul Babu puts some admissions into the mouth of the plaintiff at Kasimpur, and adds that he was talking a variety of un-intelligible Hindi which had to be interpreted. He says that the plaintiff said there that he did not know how to perform putresti that his Guru was Dharma Das—which is a fact—that his home was in the Punjab, and that his name was Sunder Das. Nothing of all this was put to the plaintiff, the name Sunder Das came to be attached to plaintiff only after an inquiry in the Punjab in June 1921 and for reasons that will appear below that inquiry did not induce the defendants to go beyond a bare case that the plaintiff was a punjabi. The case that he is Sunder Das, or Mal Singh is not in the pleading, as a case made, nor put to the plaintiff, though afterwards took place an attempt to prove that he is Mal Singh of Aujla who came to be known as Sunder Das after his initiation. As to his speech, he was speaking to Bengalis in Hindi in Buckland Bund the kind of Hindi Dehabrata Babu speaks of and there is a body of evidence to be examined that he began speaking Bengali after he declared his identity in May 1921, less than a month after his visit to Kasimpur.

The whole question as to whether he is a punjabi, or Hindusthani, or Mal Singh, or Sunder Singh, will have to be gone into, but the admission sought to be proved by this witness would not be of the slightest use, as it can not be held, on his testimony, to have been a fact. If he knew the name Sunder Das in April, and was coming to Jaidebpur in May after the declaration of identity, as he says he did, and was calling the man an imposter, and meeting Rai Saheb, and the officers, then anxious for information against the plaintiff, the name Sunder Das would spread like wild fire and would not appear for the first time in a report, dated the 27th June 1921, after an inquiry in a remote corner of the Punjab, as a discovery of great importance.

I find that the plaintiff went to Kasimpur about the 5th April, being taken there by Atul Babu and from Kasimpur he came on an elephant to Jaidebpur on the 30th Chaitra 1327, corresponding with the 12th April, 1921

This was admitted except that after the defendants began they placed the arrival on the 31st Chaitra. It will appear below what happens to this little difference introduced with a certain purpose, but it is agreed that on the day the plaintiff arrived, be it the 30th or the 31st Chaitra, he arrived at about 6 P.M. He dismounted at the Rajbari, and took his seat on the post under a Kamini tree at the Madhab bari, the Thakurbari within the Rajbari which I described before. He was still the naked, ash-besmeared bearded Sadhu, wearing his long curious jata, with nothing to burden his except a blanket, a pair of tongs, and a kamandalu for carrying water. That is the account given by Rai Saheb Jogendra and Mohini Babu, the office superintendent and the Assistant

Manager of the Court of the Wards respectively. They say they saw the Sanyasi on the day of his arrival and three is no reason that the account given so far is not correct.

It is also agreed that the Sadhu, on this occasion, stayed at Jaidebpur on the night of his arrival, the next day, and the day after till about 4 p.m. What took place during this visit is a matter of serious dispute, except for two details.

The witnesses who speak to this visit are :—

1. Mokhoda Sundari Debi, 70 (on commission).
2. Kulada Sundari Debi (on commission).
3. P. W. 14 Ram Kanai Sil.
4. Lal Mohan Goswami (P.W.852).
5. Satis Roy (P.W.922).
6. P.W. 937 Abinas Mukherjee.
7. Billoo, P.W. 938.
8. Prafulla Mukhuti 958 (P.W.)
9. Sita Nath Mukherjee P.W. 973.
10. Sagor Babu P.W. 977.

Some thing about these witnesses must be stated Mokhoda Sundari is widow of Chandi Ncogi who was a Naib of the estate. She is 70 and has lived at Jaidebpur except when she should go to her husband if he happened to be posted in a Dehi. She would mix with Rani Bilasmani, the Kumar's mother, as neighbouring ladies anxious to be in her good graces would, I except, do, and would learn sewing with the Rani who was being taught by a tutress.

Kulada Sundari is another old lady, the widow of Prosanna Banerjee, a cousin of the Rajah Rajendra. He, prosanno was the son of a sister of Rani Satyabhama, the mother of the Rajah, and this Prosonno Banerjee's name has occurred at various places in the evidence. He was called Jang Bahadur to distinguish him from another Prosanno called Nicca. This lady has lived at Jaidempur practically all her life i.e. since her marriage at the age of 11, and her home, was and still, is on the north of the Rajabari contiguous north of the boundary wall. She had suckled Indu Mayee and the other children of the Rajah, and her husband was given lands which she still enjoys. These two ladies and another, Ananta Kumari, widows of old officers who had access to the Andar were examined on commission. It is these with reference to whom the 2nd Rani said that they would call, but it was not the custom for daughters-in-law to speak to them, which is by no means unlikely so long as the Rani lived.

Ram Kanai Sil, 71, was the family barber, and lives five minutes from the Rajbari.

Lal Mohan Goswami P.W. 952, is brother's son to Rani Satyabhama.

Satis Roy P.W. 922, an officer of Digendra Ghosh of Harbaid who has deposed in this suit and who is one of the staunchest supporters of the plaintiff.

Abinash Mukherjee P.W. 937, formerly an employee of Bhowal Raja and latterly a clerk of Rani Satyabhama Debi till her death in 1922.

Billo P.W. 938 a son of Indu Mayee Debi. Prafulla

Mukhuti. P.W. 958, a close neighbour of the Raj family at Jaidebpur, and at present an officer of the plaintiff.

Sita Nath Mukherjee, a son of Dwarika, the old tutor of the Kumars, who was long in the service of the estate till August 1929, when he was discharged for neglect of duty (Ex. Z 57). While in service he deposed against the plaintiff, against the identity claimed by the plaintiff in a suit in 1922 (Z 56).

Sagor Babu P.W. 977 is the son-in-law of Jyotir Moyee Debi.

One collects from their evidence this account :

The Sadhu arrived on the 30th of Chaitra (12-4-21). None amongst plaintiff's witnesses except Radhika (P.W. 852) had seen him on that day. He arrived at about 6 P.M., and to that day no evidence goes except that of **Rai Saheb and Mohini Babu**, to which I shall return. As to the day on which the plaintiff arrived, there is the only account, not materially different from that of **Radhika**—the plaintiff was seated there under the Kamini tree, in lengti, ashes smeared all over his body. **Radhika** says that on this day—it was before dusk—which is right looking to the admitted hour of his arrival, he looked at him, noticed his hands and feet closely, but could not recognise him. If he is telling the truth, he was suspecting he was the Kumar, and his conduct was very much like that of Mr. Meyer on the Buckland Bund. **Lal Mohan** was referring to this day as 2 or 3 days before the Chaitra Sankranti (the last day of Chaitra), but he was referring to the day of his arrival, seeing that he gives an account of the next two days, the plaintiff leaving on the 3rd day.

Next day the 31st. let us take that provisionally what

happened was this, according to Sagar Babu who gives the date as the 31st.

In the morning he Sagar Babu, went to Rajabari to see Rai Sahab, his brother, whose quarters were in the Rajabari, and who was in fact the only inmate in the house, besides Basanta the maternal uncle of the Kumār who lives there still as licensee of the Court of Wards. No body says that he was living there at the time, and no body mentions him in connection with any incident whatever. Now Sagar Babu went to see his brother, and his brother Jogen Babu, said that a Sanyasi had arrived from Kasimpur whom people there were suspecting as the 2nd Kumar. "Let us go and see him" he said. Both went to the Golvaranda the eastern section of the southern verandah of Rajbilas which I mentioned before), and there found the Sadhu seated. It was then 8 A.M.

"Sadhu was seated. His hair, curling, and pingla, fell up to his knees. He had a beard. His face and his whole body was covered with ashes. He looked at us as we stood facing him. I could see the colour of his eyes. It was brownish. I observed his build, his style of sitting, and the way he looked-his way of looking. I suspected he was the 2nd Kumar. I told Jogen Babu what I thought. He said the matter looks serious. I asked him what he thought. He said: Don't make a row. Lets wait and see him further".

This conversation took place in the Gol veranda, the plaintiff seated there. When he was there Budhu came. My brother had no talk with Budhu Babu in my presence. They went to a room and talked.

Budhu then left, but before that he said that his mother wanted the Sadhu to be taken to her house, but the Sadhu, asked by him to come, said he would go, not then, but in the afternoon. After this Sagor Babu and Jogen Babu went to take their meals, returned, found the Sadhu still there. "As I looked and looked, my suspicion increased. Jogendra Babu was also there. He and I were there till about 5 or 5-30 P.M. when Budhu Babu came, and took him away in his carriage."

This account fits the evidence of Lalmohon so far as he says that he saw the Sadhu on this day at sunrise going towards the Rajabari—the Rajbilas, getting upon the Golveranda, and smearing his body with ashes, and seeing him also at mid-day at Madhab Bari, and possibly also his seeing him at dusk, but not his evidence that he saw him at dusk at Madhab bari as Budhu had then taken him away. Nor does Sagor Babu's evidence fit an admitted fact. On the afternoon of that day—the second day of his visit—plff. went to the house of Mohini Babu, Assistant Manager. That is common ground, and any account that does not fit in cannot be accepted. Sitanath says that he saw the plff. that day at the house of the Assistant Manager, and looking up his diary, he said that the date was the 13-4-21 which was the 31st Chaitra. Mohoni Babu, the Assistant Manager, says also that the plaintiff came to his house, that day, late in the afternoon at about 5 P.M. That is common ground. From there he, the Sadhu was taken to the house of Jyotir Moyee according to witness Satis Ray.

One fact is therefore plain. The Sadhu was in the house of the Assistant Manager, a few minutes from Madhab bari, at about 5 P.M. After that he went, according to the Assistant Manager, to Madhab bari, and then at night he was brought to a Tea party held on the

Golveranda, and there he made a certain admission. He, as well as Rai Sahèb Jogendra and Phani Babu, D.W.92 and three other witnesses whom I shall mention support this party, given, so it is said, because it was the 1st day of Baisak the Bengali New Year's day. The evidence on the side of the plaintiff is that from Mohini Babu, Assistant Manager's house the plaintiff was taken to the house of Jyotir Moyee Debi by Budhu, and there took place the first meeting between her and the plaintiff. This last was the fact. The tea party has been disproved by certain facts, and whoever spoke to it spoke to an invention. The fact will appear from an examination of the account given below.

Jyotir Moyee Debi says that she heard some thing from her son about a Sanyasi who had come and asked him to fetch him. He went out in tom-tom to do so, but returned alone. At dusk the Sanyasi came. It was the last day of Chaitra. She found the Sadhu seated on a mat on the southern verandah of her house. Near him sat her two daughters, her grand-mother, Satyabhama Debi, the three sons of Indu Mayee Debi, her deceased sister, and her husband, Gobinda Babu. It will be recollected that the houses of the three sisters were at Chakkar, side by side, the western most one being that of Jyotir Moyee Debi, and the eastern most that of Indu Moyee, the middle one that of the youngest sister who was away. Jyotir Moyee Debi's house was a mud-walled corrugated-iron roofed structure, with grounds, and a full description of it will be necessary later. The house is less than a quarter of a mile from the Rajabari, and faces south.

On the southern verandah of this house the lady found the Sanyasi seated on a mat, the family around him as I stated. Sanyasi sat, says she, head bowed down, looking

a downcast side long way, "That reminded me of Mejo's way of looking at people. It excited my suspicion. I started looking at him, scrutinising his features, eyes, ears, lips, figure, hands and feet, the contour of his face. The others present also looked at him, and had my suspicions. It was dark then. We could not see the colour of his eyes. We had some conversation with him in Hindi. I asked :

"Tum kai roj hian rahega"? (How many days you are going to stay here).

He said "Ham kal Brahmaputra snan me chala jaega, (Nagalbund)". (I go to-morrow to the Brahmaputra bath at Nagalbund).

I gave him fruits to eat and some soft sar (condensed milk) and some hard sar (cream). He took nothing, except the hard sar. After taking this, he left.

I noticed his gait—it was that of the 2nd Kumar. I noticed his height, but he seemed slightly stouter, a shade stouter, like 10 and 20. His face that day was smeared with ashes."

"After he left we talked about the Sanyasi, and decided to call him, and feed him the next day, and see him in better light during day. That night I sent Jatin Bhattacharjee, my officer, to ask him to a meal. He came back and said some thing."

Next day—the 1st. Baisakh—her son, Budhu, went out after tea to fetch him. He did not come then but came at about mid-day or a little after.....

One gets some account of what the Sadhu was doing in the morning. Ram Kanai Sil, the family barber, saw him in the morning going towards Rajbilas, get upon the verandah, go along it, open the shutters of the 2nd Kumar's room look in, pass on, and get into the privy I described above, and then wash under a tap in the

Bath room. Then he came out, proceeded to Sasaneswari on the Chillai, and thence went to the house of Jyotir Moyee Debi. On this morning the old lady Makhoda had seen him too—she had gone hearing that a Sadhu had come who looked like the 2nd Kumar and this is her description of what she saw.

My daughter and bahu and Isaw the Sadhu going towards Madhab bari, I saw his back. I saw his gait, and a thrill passed through me. That was the 2nd Kumar's gait, I thought. He walked on, and we followed at his heels. As he descended towards the water at the ghat of Madhab bari, I stood on the southern verandah of Madhab bari. The Kumar came, and sat on a mat near the Kamini tree. A dhuni was burning in front, and this he took up, and put in front of him on the mat. There was a towel on his lap. He would take it up, wipe his face, or put it down. I went on looking at him, the same face, the same eyes, the same milk-and-lac cheeks, the pingla moustache, the way in which he looked. I very much suspected then that he was the 2nd Kumar. I could not go near him as lots of people were there."

This does not strike me as an invention. It is memory un-spoilt by education. It is clear however that she had not recognised him whatever might be her suspicion.

At about 12 A.M. the Sadhu came to Jyotir Moyee's house. That he came on this day the last day of his visit to Jyotir Moyee Debi's house is admitted. She says he came in a carriage of the estate, accompanied by Ram, a son of Rai Sahab Jogendra Banerjee. All present on the day before were there. The Sanyasi sat in a big chair in her son's baithakhana. Govindo Mukherjee (her sister's husband) sat at the edge of a Chauki, and the

witness and Satyabhama Debi sat in chairs, and the rest stood.

"The Sanyasi asked my grand-mother in Hindi she goes on, to sit on the chauki". She moved, and sat at the edge of the chauki. The Sanyasi said. "Uthke-baitha" (sit up). She sat up, and faced the Sanyasi. He asked her to come nearer, and drew her to him by holding her leg. Then he said :—

"Burhika bara dukh hai" (the old woman is very unhappy). Then he pointed to my two daughters and asked: Ai tomara dono beti hai (These your two daughters?) And pointing to my son asked. "Your son?" and pointing to my sister's sons. "Your sister's sons?" And pointing to Keni my sister's daughter said, a kon hai? (Who is she?). I said "she is the daughter of my elder sister". As I said that, the Sanyasi burst into tears. Tears trickled down his cheeks kenî was then a widow.

"As the plaintiff wept, Tebboo (Indu Moyee's son) held before him a photo of the 2nd Kumar—either the photo, Ex. L or one like it. As Teboo held the photo—he did so at a moment when he had ceased to weep, the plaintiff began to weep. Then Tebboo showed him a photo of the Choto Kumar. As he did that, the plff. wept more, and lay down sobbing—his arm held thus (shews arms covering the eye) Ram was present then. Ram said something. He knew the Kumar very well before he went to Darjeeling. He is no doubt the 2nd Kumar, said he, don't let him go, Didima. As the plaintiff wept, I said.—

Tom to tyagi hai tom etna rota kisika waste? (You are an ascetic. Why weep so much?)

The Sanyasi said: ham mayase rōta hai (Maya makes me weep).

"But you are an ascetic. Maya for whom?", she asked. To that the Sadhu made no answer. Then she said in Hindi.

"I heard that my 2nd brother died at Darjeeling. When he was taken to the sasan for cremation there was heavy rain and storm, and because of that the people left him there and went elsewhere. When they returned they did not find his body. Of those who had gone to Darjeeling some said he was burnt, and some said he was not burnt.

Before I completed my sentence, he said: No, no that is false. He was not burnt, he is alive."

Then—he looked at me, and I noticed his eyes. They were brownish, as my brother's were. Then I asked in Bengali the conversation was hitherto in Hindi of the kind indicated.

Tomar somosta abayab mejobhair moto dekhi tobe tumi ki sai? (Every feature of your body looks like my brother's Are you he?

No, no, said he in Hindi, I am nothing to you.

I put my question in Bengali to see if he could understand Bengali. He took his meal that day. I noticed his index finger sticking out, as he was taking his food, and he was putting out his tongue a bit.

I noticed his features. I noticed his Adam's apple. I noticed his hair was red—kata eyes, brownish. I noticed his eyes, ears and nose, the cut of his face, and mouth. I noticed his teeth—they were those of the 2nd Kumar, even smooth, and beautiful. I noticed his hands, and finger-nails every one of the finger-nails. I noticed the palm and back of his hand. I noticed his leg, and feet, and toes. I remembered what sort of nails and toes my 2nd brother had. How could I forget—we had lived together from infancy. His whole body, arms, legs and

face, and even the eye-lids were smeared with ashes. His hair was long. He had a beard now. The 2nd Kumar did not wear a beard when he went to Darjeeling. His utterance on this day was indistinct. His voice was that of the 2nd Kumar."

The others present also spoke to him that day—she does not remember what. After his meal was over 'we took our meals, and when we finished our meal it was 3 P.M. The Sanyasi seemed anxious to go to Dacca on his way to Astami Snan. My suspicion that he was my brother had grown very strong, and I wanted to keep him for a few days to see him more closely, and to make sure if he had the old marks on him. I asked him in Bengali. "How many days will you stay at Dacca?"

Some ten days, he said. He left in my son's tom-tom. I saw my son drive it, as he set out. Returning, he said something.

It is not disputed that the Sanyasi was at her house this day, and left at about 4 P.M. It could not be denied because of a certain document—the report of Mr. Needham Ex. 59 to which I am going to come. What came to be denied, after the defendants began, was that the Sanyasi was there was on the previous day which was the 1st Baisakh, not the 31st. Chaitra, and the case made was that it was on the 2nd Baisakh that the Sanyasi came to Jyotir Moyee's house.

Leaving aside the witnesses who speak to the Sadhu coming to the house of Jyotir Moyee on the 31st as well as the 1st. Baisakh, one finds Mr. Chaudhuri, for the defendants putting this question to Jyotir Moyee Debi during her cross-examination on this part of the case.

Q.—You brought the plaintiff to your house at Chakkar on the 1st. Baisakh to get some medicines for Heni's eyes and for Budhu's wife's sterility?

A.—Never.

Q.—When he took his meal he put things into the cups, without taking them out of the thala and putting them on the floor?

A.—No. Food was served on a stone plate and the batis were not put on it.

He was not questioning the date at all. He was not questioning the two days' visit, and all that he asked and elicited was that she had not recognised the plaintiff on those two days, which is obvious, and which the lady admits. And he asked putting the date into his question the question aforesaid, and a further question as to whether it was not a fact that on the 1st Baisakh Rani Satyabhama Debi paid the Sadhu Rs. 2 after making her bow to him.

It is plain that on the 1st Baisakh the Sadhu was taken to Jyotir Moyee's house, took a meal there, as suggested, and that Rani Satyabhama was there, as also suggested by the defence. It is also equally clear that the Sadhu had called there on the previous day for a short time. The case of the defendants is that he was suspected by nobody as the 2nd Kumar he looked utterly unlike and talked Punjabi and that he was taken to Jyotir Moyee's house to cure Heni's eyes and Budhu's wife's sterility.

After the plaintiff closed, the defendants came out with a case touching this first visit of the plaintiff, he came on the 31st at about dusk, he went to the Assistant Manager's house on the 1st. Baisakh, and on the same evening, it being the Bengali New Year's day—A Tea party was given by Rai Saheb on the Golverandah at the Rajabari. To that party the plaintiff came, and there he took refreshments. He was asked there by Phani Babu (D.W.92) where he belonged to, and he said Punjab",.

and he said also, on being so asked, that he was a Naga. During the course of this party, Jatindra Bhattacharjee came, and asked that Jyotir Moyee Debi wanted the Sadhu to go to her for the treatment of Heni's eyes, and for a cure of the barrenness of Budhu's wife. Phani Babu explained to the Sadhu in Hindi who the lady was, and requested him to go. The Sadhu agreed to go.

To this party and the admissions there made have deposed Rai Saheb Jogendra (D.W.310) Phani Babu (D.W.92), Mohini Babu Assistant Manager, Birendra (D.W.290), Abani (D.W.324) and Ashu doctor (D.W.365) —the whole lot of the witnesses who may be described as the prop of the defence, all employees of the estate, except Rai Saheb who expects to be re-employed, and Phani Babu who, when I come to deal with his evidence, will speak for himself. On this matter of the Tea party they have given false evidence. It was not put to the plaintiff. It was not put to any of the witnesses who were speaking to the first visit of the plaintiff. It was not put to Jyotir Moyee Debi. The 1st. Baisakh visit was put to her by the learned Counsel himself. The visit to the Assistant Manager was on the 31st according to the evidence of Sitanath who looked up his diary, and who had spoken to this visit when he was deposing against the plaintiff as an officer of the estate. It never occurred to any body to question the date. And when on the 5th May, Rai Saheb and Mohini Babu sat down together and wrote out a version of the facts in the report that was signed by Mr. Needham, and sent up to the Collector, did not say when they were referring to this visit of the plaintiff that he had said he was a Punjabi, in fact said nothing to suggest that there was anything against his claim to be the 2nd Kumar of Bhowal. Vide page 117 where this report has been quoted.) This tea party, like

the journey to Kasimpur in the company of Mr. Thomas Ranjan, is a piece of deliberate falsehood to which the witnesses aforesaid had come prepared to swear, and as I go on, it will appear that this is by no means the only instance in which they were so prepared.

This medicine-man's theory that the plaintiff was taken from Buckland bund to Kasimpur to cure sterility, that he called at the Assistant Manager's to cure a female disease, that he went to Jyotir Moyee Debi's house to cure another case of sterility, and her daughter's eyes in which it appears there was some trouble mentioned in her letter of 1916 (Z32) and that this medicine-man suddenly declared himself to be the 2nd Kumar on the 4th May—this theory continued until, in view of the other facts that emerged, it was hardly mentioned during argument. In fact Mr. Chaudhuri did not, it seemed to me, like to be reminded of it. But let me proceed to the other facts which followed.

The Sadhu left on the 1st Baisakh, 1328, or 14-4-21. The plaintiff says that from Jaidebpur he proceeded to Chandranath, a shrine in the district of Chittagong. He was seen there by a witness, Anath Bandhu Banerjee (P.W.645) quite a respectable man who had gone there to look to the construction of a bridge at his cost for the benefit of pilgrims. He saw the Sadhu at Sitakundu, but the point is that the family had lost sight of him, and so far as they were concerned, he had vanished.

The Sadhu returned from Chandranath, and resumed his life at Buckland Bund. This was about the 20th April. On the 25th April, or thereabouts, occurred another admitted fact. One finds the plaintiff at the house of Saibalini Debi at Dacca. She is a sister of Phani Babu aforesaid. She used to live in a house at Dacca—a house

of her own, being a gift from her mother's mother, Swarna Mayee aforesaid.

She admits that Jyotir Moyee Debi was in the house when this Sanyasi came. She does not explain why she was there. She had no house at Dacca, but lived at Jaidebpur. What Jyotir Moyee Debi says on the point is this :—

The Sanyasi left Jaidebpur on the 14th April (1st Baisakh) and some 10 or 12 days passed, and then she sent her son Budhu and her officer Jiten, to Dacca, but they did not find him. She therefore came to Dacca herself, and put up at the house of her sister's husband, Brojo Babu, the pleader. She went there as he had no basha of her own, and she wanted to shew the Sanyasi to her sister, Matar (also called Tarin Mayee). And to take the plaintiff home. She says that she could not get the Sanyasi to Brojo Babu's house as he objected, so she asked her son to take him to the house of Saibalini. Kala and Budhu, and Jiten went and fetched him, and this Saibalini, examined on the other side, admits except that she does not mention Jiten, the officer.

It is a fact then that the plaintiff was brought to this house at about dusk by Kala, the son of Saibalini and Budhu. He was seen there by Saibalini, Kamal Kamini, Phani Babu's mother's sister, certain girls, and Matar, the youngest sister of the Kumar. Saibalini admits this though as to Matar, she says she does not remember. She was there, I find.

Why was the Sanyasi taken there? To cure Kala's wife of sterility. That is what Sailabala Debi says. Kala had a son who died two years after the death of Swarna Mayee i.e. in April 1919 (Swarna Mayee died on 18-4-17). The lady had to admit that and began to talk of a uterine disease. Sanyasi of course, said so she says, that he

could do nothing. All this is false. Why should Matar and Jyotir Moyce go there? It is plain that they went there because Jyotir Moyce Debi suspecting that he was the Kumar. Kamal Kamini Debi, the daughter of Swarna Moyce, and aunt of Phani Babu has deposed for the plaintiff. Her evidence is that on this day she saw the plaintiff at the house of Saibalini. Admittedly she was there. She too suspected that he might be the 2nd Kumar.

The Sanyasi was there for about half an hour, and then left.....He was in his usual garb—the lengti, and he had his long jata and beard.

The next thing that happened is also admitted. On the 30th April the Sanyasi arrived at Jaidebpur, and came to the house of Jyotir Moyce Debi. Who brought him there is disputed Jyotir Moyce Debi says that she sent for Atul Babu to get the Sanyasi to her house Atul Babu came, said he too suspected that the man was the 2nd Kumar, and agreed to bring him. Then he and Budhu went to Dacca and brought the Sanyasi by the local train that reached Jaidebpur at 7 or 7-30 P.M. Atul Babu denies that he brought him, there is no point as to who had brought him so long as he was brought except so far as it goes to his evidence against the identity—but I have no doubt whatever that it was he who had brought him just as he had taken him to Kasimpur, though on this occasion Budhu was with him. A few days later the plff. was in every body's mouth, and people who had seen anything of this Sanyasi before he caused the sensation he did, might well recollect things which they would otherwise forget. P.W.602 Bhutnath Babu who was a parcel clerk at Dacca Railway Station, and who does not belong to East Bengal at all, remember this Sanyasi going to Jaidebpur by 7 up, and there was a crowd at the station, and he got a glimpse of his through the crowd.

Gopal Basak, P.W.237, saw him at the Railway station in the company of Budhu and another man, although he fixes dates as June or July. The plaintiff was on that day an ash besmeared Sanyasi which he never was after the 4th May. Mr. Abdul Monnan saw him and Budhu and Atul Babu get out of a carriage at the station at about 5 P.M. Nagendra, P.W.806 saw the plaintiff and Atul and Budhu arrive at the Jaidebpur station, with Duranta, an officer of Atul Babu, and they all came to the house of Jyotir Moyee Debi after dusk. It is perfectly clear, looking to this evidence and the Ex. 59 which is Mr. Needham's report but really the statement of Rai Saheb and Mohini Babu as they say, that the plff. came on this day as admittedly he did, with Budhu and Atul Babu and Duranta. The plaintiff therefore told the truth when he said that he went to Jaidebpur on this occasion with Budhu and Atul Babu.

That night, he says, he passed at the house of Jyotir Moyee Devi. This was the 30th April. He stayed on till on the 4th May he declared, or is said to have declared, his identity. It is agreed on all hands that on that day it came to be known that he had declared himself to be the 2nd Kumar.

In the meantime what was happening during the three days before this event? The plaintiff slurs over these days as uneventful, and comes straight to the day on which he declared his identity. He was not taken through these days, but the sister gives a full account whose truth will have to be ascertained.

The account she gives I give as she gave it, shortening it a bit, but omitting nothing essential.

He arrived at 7 or 7-30 P.M. He took his seat in the baithakkhana. Bhulu's officer, Duranta was there. My officer Bhulu (Atul Babu) Jiten Babu, and some

blhadralogs who used to come to my son every day for playing cards, and the like also were present.

I was in the next room, seeing through a chink in the door. I could see the Sanyasi weeping. I sent for Jiten Bhattacharjee, and asked why he was weeping. He said the Sanyasi was looking at some of the photos of the Kurtas, which Jiten had brought from Dacca framed, and weeping. By Kurtas he meant by brothers. That night there was no talk with the Sanyasi.

Next day : The Sadhu went before day-break to bath in the chillai, and returned smeared with ashes. That day certain pleaders had come from Dacca in connection with a suit of Heni and Keni, and those and the Secretary Jogendra (Rai Saheb) too took their meals at her house. Plaintiff took his meal in the Niramis kitchen, and sat in the adjoining room opening into the verandah on which the above people were at their meal. After the pleaders left, Jogendra Babu came where the plaintiff was. The plaintiff then said in Hindi clean my battakkhana. That made every body suspect the more. Why did he say that?

I told the Sadhu not to smear his body with ashes. I said that as I could not see the complexion. He said : Why? In Hindi. Next day : He came from his bath smeared with ashes.

Then I said : I forbade you to put ashes on your body still you did it. You must not do it tomorrow.

Next day : (3rd May). When he went to bathe, Ananda, his old Khansama and Nagen Bhattacharjee (P.W.806) went with him. He came back clean of ashes.

Then I saw his complexion. It was the 2nd Kumar's complexion as of old, and seemed brighter still on account of Brahmacharya. Then, looking at his face, cleaned of ashes. He looked like Ramendra himself. I noticed his

eye lids darker than his complexion. I saw the mark left my the carriage wheel, and I saw the rough and scored skins at the wrists, and at the instep. The relatives I already named by grand mother and the rest also saw him, and recognised him, just as I did.'

Then she says that many old ladies who knew the Kumar, and many neighbours, and tenants such as live near were present on this occasion. They all said. He is the Kumar. The tenants present numbered not less than 100 or 125.

On this day, the 3rd May, Jyotir Moyee Debi, tried to get her son to look for all the marks on the 2nd Kumar's body to which she had deposed, but the Sadhu would not let him.

Next day : 4th June.

Budhu tried to look for the marks, and on this day the Sanyasi did not object. She asked her on and Jabboo too look for such and such marks which she names. This took place at about 7 A.M. when no out siders were present. She was asked why she looked for the marks if she had recognised him. "I did so says, she, as the matter as very serious and we wanted to be dead certain, so that no question could ever arise in our mind".

The same day later 9 A.M. People began to turn up. After the plaintiff had finished his Sandhay (a prescribed prayer for Brahmins) I spoke to him when people were in the compound and he in the western room. Members of the family were in that room I said "Your marks and appearance are like those of my 2nd brother. You must be he. Declare your identity."

He said. No, no I am not. Why do you annoy me. I will go away. You must say who you are said I, Your refusal won't do.

I told my son to tell the people who had come that all the marks of the 2nd Kumar's body were on him. My son and sister's son told the assembled people what I asked them to tell them. I was standing behind the chik.

That day, my brother, the plaintiff, sat among the tenants and they insisted upon his telling them who he was. He did so in the afternoon. I had told him that I would not take my food until he told us who he was.

He disclosed his identity, so she says, as Ramendra Narayan Roy. It was then 4 or 5 P.M.

She describes how in the middle of a crowd this declaration was made, as he sat on the chatan in front of her house. She was in the verandah with lots of women. He sat out in the open. Somebody asked : What is your name?

He said : Ramendra Narayan Roy Choudhuri,
What is your father's name? Raja Rajendra Narain Roy Choudhuri.

Your mother's name? Rani Bilasmani Debi.

The questions were put by some one or other in the crowd, and he made those answers, and then somebody said, "Every body knows the name of the Raja and the Rani, who brought you up?"

Plaintiff answered. Aloka.

Then the assembled people cried out "Madhyam Kumarer Jay" and the woman shouted their jokar. The plaintiff who was seated on an easy chair seemed to go into a fit. I rushed to him, and the people made way for me. About 2000 to 3000 men had collected there. When I went to the plff. Magnamala came with me. I fanned him, and put rose water on his head. I did so far about ten minutes. I sat on a chair, as I did so. As he recovered he was removed to the house of Matar (the

youngest sister) where there was no crowd. The crowd tried to follow there, but were requested to desist.

This is the account she gives of Atmo-parichay—the declaration of identity. She adds that Rai Sahēb was present at this atmo-parichay, and that he had been coming on each of the days the sadhu was there. He adds also that Basanta a maternal uncle of the Kumar who as I said lives in the Rajbari with the permission of the court of Wards, just as Rai Sahēb does, was also present at this transaction. It is curious that neither party has called him, and that his name has hardly been mentioned in connection with any of the other incidents that occurred in this case, though he is under the defendants' control. Now this account must be closely examined, not merely to get at what truth there may be in it, but to get at its significance. You do not look for marks for instance, if you know your brother. On the other hand you must pick up the emotions of the day, think of the ashes and the beards and the jata and Judge the probabilities by taking the events that followed and by placing yourself in the position of the lady in a situation in which she could hardly believe her eyes, supposing there was such a situation. Above all, it is necessary to get to how much of this transaction is indisputable, so that the controversy as regards this point might be limited to the residue.

The account given of this day is corroborated in material particulars by Ananta Kumari Debi (on commission) Mokhoda Sundari (on commission) the two ladies I mentioned, and by Nagendra P.W.806, Lal Mohon Goswami, Abinash 937, Sagor P.W.977, Billoo 938, Some of these speak to the three preceding days as well, and they are all agreed that there was a crowd when this atma-parichay took place. It is also in their evidence

that the tenants who were present on this occasion paid nazar, some of them, to the plff. and one other fact that the plaintiff from the moment of atma-parichaya began to talk Bengali, though with a Hindi tone, and his speech had acquired besides a trait which the 2nd Kumar had not. It seemed to stick and various witnesses have tried to describe it by words like atka atka, bhar bhar, aure aure, as though a pebble was in his month.

The account of this day need not rest upon the credibility of any particular witness. There is no doubt that the witnesses aforesaid except the two old ladies and Nagendra are partisans in the sense that they are not indifferent to the plff's success—the sister and her sons in law, and a relation of Satyabhama Debi and an employee of Digendra Ghosh who has been, as I said staunch supporter of the Sadhu. But look at the case and the evidence on the other side.

The case of the defendants is that the plff. came on this occasion also as a medicine-man stayed at the house as a Sanyasi in the chatan for three days with a dhuni burning before him and out in the open and that on the 4th day the 4th May, it was given out that he had declared that he was the 2nd Kumar. And their case also is that he was looking utterly different and could not talk a word of Bengali, nor understand it.

They called two witnesses on the point besides Phani Babu aforesaid. Their evidence goes to the days before the 4th May. One of them is Tasaruddin D.W.76. He says that he was a servant in the house of Jyotir Moyee Debi for about 2 years and a half until about the 10th May, seeing that he left 3 or 4 days before the meeting of the 15th to which I shall come. He would not sleep in the house, but would come early in the morning, and go away at about 10 P.M. in the night. He describes.

Jyotir Moyee Debi's house a mud-walled, tin roofed bungalow, containing 7 rooms central hall, with a room on either side and a verandah on the north and verandah on the south and on either side of each verandah is a room. The house faces south, and has as indicated, a verandah in front. The eastern room was the room in which Sagor Babu would sleep with his wife, and the western room was Budhu Babu's room. Jyotir Moyee Debi and the children slept in the hall which was used as a bed room.

Now this witness, Tasaruddin, says that during the three days aforesaid the plaintiff would sit out in the chatan in front of the house, he says 2 or 3 days in examination in chief, but gave 3 days definitely in cross examination smeared with ashes, clothed in a lengti, and facing a fire and there were his tongs stuck close to him on the ground, and his Kamandalu. During these three days he would go along the road to Sasan, i.e. to say, towards the river, and he, the witness, would come across him as he came to Budhu's house, i.e., early in the morning which he had said was his hour. During these three days no outsiders came. On the 4th day the family began to call him mama (maternal uncle) and he discarded his lengti and began to stay and sleep in Sagor Babu's bed room the room of Jyotir Moyee Debi's daughter, Mani. He says that this calling him mama, and calling him, the 2nd Kumar began in the morning, and no outsiders came except in the afternoon when 15 or 20 people came. Later, people began to come in increasing numbers.

The account in its outlines, leaving aside the picturesque tallies with that given on the other side. The plaintiff was there for three days, and would go early in the morning to the Challai to bathe, that on the 4th day when he is said to have declared his identity he

discarded the lengti and put on a dhuti, worn like a tapan, and began to be called mama. The witness does not deny that Satyabhama was in the house at the time no body denies that she would be lived at Jyotirmoyee Debi's house, occasionally at all events, as the witness says.

Consistently with the theory of the medicine-man, left out in the open till the 4th May, a witness comes and says that he went to the house one day during this period and found the Sanyasi in his lengti seated in the chatan. He wanted a medicine for rheumatism, but as the Sadhu would not understand Bengali, Budhu spoke to him in Hindi, and the sadhu gave him a medicine (D.W.108).

Consistently with this case, Phani Babu aforesaid (D.W.92) says that he saw the Sanyasi on one of these days, seated out in the chatan under the Mangoe tree, giving medicine to people, and on one or two occasions had to interpret in Hindi. He adds that during this period there was not the slightest suggestion or suspicion that he was the 2nd Kumar, and that people were coming to see him as a Sanyasi, a detail which Tasiruddin was not wise enough to insert. Consistently with this case, Rai Saheb and Mohini Babu, say that until the 4th May, they had not heard that the Sannyasi was being suspected as the 2nd Kumar, and that he was not causing any noise or talk. He, Mohini Babu, did not know that the people were coming to see him. "All that I had heard was that the Sanyasi was again at Jyotir Moyee Debi's house, felt curious why he had again come, imagined he had come to treat some disease and did not think that the return of the Sanyasi was a news to be told to any body. These two witnesses add that it was only on the 4th afternoon that they were informed that the Sadhu was

calling himself the 2nd Kumar. And some evidence was given too that this news caused no sensation to speak of (e.g. D.W.377 and other).

On the defendants' case, then, the Sanyasi on the Buckland Bund was being taken from place to place as a medicine-man, to Kāsimpur to Saibalini's house, to Jaidebpur, suspected by nobody as the Kumar, coming for the 2nd time to treat somebody, staying at the house of Jyotir Moyee Debi but in the yard, seen by people calling for medicines, until on the 4th day the 4th May this Sanyasi a Punjabi, talking an unintelligible jargon, looking utterly different from the kumar, suddenly declared, or was made to declare or represented as having declared, that he was the Kumar without knowing whether the Kumar was tall or short, fair or dark, young or old, married or single, if it was his own act, or if it was not his own the family put him up, despite the widow despite his absolute illiteracy, despite his tongue, and despite his utter dissimilarity in looks, despite his complete ignorance of the roll he was to play; and then placed him in the open to be seen by all comers, in the heart of Jaidebpur and sent him to interview the Collector of Dacca, and made up their mind to fight the Court of Wards, and against an estate whose rent roll is something like ten lacs of Rupees.

But the possibility of this too will have to be examined. And the court will consider, despite the utter dissimilarity theory, whether some resemblance aided by the emotions of women had not produced the trick, and wish had not become father to the thought, nor would the improbability of the thing establish the identity. But look at the account that is being given of the second visit of the plaintiff ending with declaration of identity the account given by Jyotir Moyee Debi one side, and the

defendants' witnesses on the other, and then look at the following report sent to the Collector on the 5th May, the day following :

D.O. No. 100.

Jaidebpur.

The 5th May, 1931.

Confidential.

My dear Lindsay,

A very curious and extraordinary thing is happening here which has created a tremendous sensation throughout the estate and outside.

About 5 months ago a fair complexioned mendicant came to Dacca. It is reported, from Hardwar and stayed on the river side just opposite to Rup Babu's house whence he was taken to Kasimpur by Babu Saroda Prosad Roy Choudhuri, zemindar of Kasimpur. He halted at Madhab bari at Jaidebpur as other mendicants used to do. During his stay at Madhab bari he was taken to the house of Srj. Jyotir Moyee Debi, Srj. Jyotir Moyee Debi began to shed tears finding in the Sadhu some likeness of her late 2nd brother, Kumar Ramendra N. Roy of Bhowal) and the Sadhu too burst into tears. This raised some suspicion in the minds of the inmates of the house. After a photo of the 2nd Kumar was presented to him, he began to shed tears profusely, this strengthened the suspicion already created. He was then questioned by the inmates of the house as to who he really was, but without giving any answer he abruptly left for Dacca. For a few days nothing was heard of the Sadhu.

"A week ago the Sadhu was again brought to the house of Srj. Jyotir Moyee Debi by Babu Atul Prasad Roy Choudhury, zeminder of Kashimpur, and since then

he has been staying there. On seeing the Sadhu who is here now an impression has been made upon the minds of the people who are visiting him daily in hundreds that he is the late 2nd Kumar. Tenants from different parts of the estate, and also outsiders, are daily coming in large numbers, visiting the Sadhu and giving out that he is the 2nd Kumar. His presence has created a very great sensation in the locality.

‘Last evening the Sadhu, being questioned and hard pressed by several hundreds of tenants, at last gave out that his name is Ramendra N. Roy and his father’s name was Rajendra N. Roy and his nurse was Alaka Dhari. After this the Sadhu fainted and the numerous people present began to utter Hulludhani and Jaydhani. All the people who were present at the time were convinced that he was no other than the 2nd Kumar, and the tenants present gave out even if the estate could not accept him, they would stand by him and maintain his position. Finding the gravity of the situation, the inmates of the houses of late Srj. Indu Moyee Debi and of Jyotir Moyee Debi informed Mohini Babu and Mr. Bannerjee that the Sadhu had given out such and such things. They forthwith proceeded to the house of Srj. Jyotir Moyee Debi and enquired about the matter. The Sadhu did not meet them. They went there this morning again, but the Sadhu sent intimation that he would see them this afternoon. The inmates of the house threatened the Sadhu that he was incurring great responsibility by expressing in words and by conduct that he is the 2nd Kumar and that he cannot leave the place without giving the full particulars about his identity and past history. Under the circumstances a sifting enquiry about the Sadhu is urgently needed. From morning crowds of people have been flocking to see the Sadhu, and the excitement and

sensation is so great that the matter may take a serious turn unless necessary steps are taken promptly.

I am awaiting your instructions in the matter.

Yours sincerely,
Sd. F. W. Needham.

J. H. Lindsay Esq. M.A., I.C.S.
Collector of Dacca.

Memo No. 12, dated 5-5-21.

Copy forwarded to Srj. Bibhabati Debi for information.

Sd. F. W. Needham,
Manager.

This communication was sent to the 2nd Rani as well as the other two Ranis. The plaintiff proved the copy produced by the 1st. Rani and it was only after the Asst. Manager admitted that a copy was sent to the 2nd Rani as well, that the copy was produced by the defendants, after the examination of Satyen Babu. D.W.380 who after a little pretence of ignorance as to what the first information that his sister got exactly was, admitted that it was a type written letter and it is admitted that it was the one just quoted.

The case of the defendants is that this report was composed by Rai Saheb and the Assistant Manager, and based mainly upon information, and not personal knowledge. The assistant Manager did not know the Kumars, but Rai Saheb knew him as well as any body in this case; except the sister and the other relations. He the Secretary would be constantly in the Rajabari, and continued in service after the choto Kumar's death as office Superintendent and became, as will appear below, the officer directing the steps taken against the Sadhu

and the principal tadbirkar for the suit. Mohini Babu was taken by the defendants through the said letter, and pointed out what portion was his personal knowledge, what portion inference, what portion information, and what portion only opinion. It was a report by the Manager to the Collector, in the course of discharge of his office. It goes perilously near an admission. The idea is to convert that into a statement of Jabboo and Budhu, both dead, and to call that statement false. For Mohini Babu says, and Rai Saheb supports him, that on the 4th May at about dusk Budhu and Jaboo came to them when they were in the Rajabari near the tennis court, and made the report, told them what had happened. They went to the house of Jyotir Moyee at once, were told on the way what had happened during the first visit of which they knew nothing, except that he had stayed at the Madhabbary and then at the house they were told that the Sadhu had said such and such things. That people were coming to see him before this day in hundreds was not their personal knowledge but that the crowds were coming to see him from the 5th, the date of the letter, was Mohini Babu's personal knowledge and as to the sensation and the peril, that was a matter of opinion, suggesting it was nothing of the kind.

The medicine-man theory was troubling Mohini Babu. No body had suspected him as the Kumar before, and even on his declaration of identity, all that happened was a mild sensation. He says, for instance, in cross examination that crowds of people were coming from the 5th and creating a serious situation meant 10 or 15 people, hundreds of people coming daily before the 5th to see him was nothing to his knowledge, but their version. Jaidebpur is a small village, where every body knows every body and Budhu's house was at the South-East of

the Rajabari, and there are houses of the officers of the estate and a Dehi office on the road to the Rajabari. If Budhu Babu had said that a volcano had burst out of the grounds at Chakkar, it would not go into the report, assuming it was his.

But nothing short of it had happened. Look at the entries in the General Register kept in the Jaidebpur Thana proved by the Sub-Inspector then at the thana.

4-5-21. 9 A.M.

A handsome-looking matted haired Sanyasi, name and home unknown, has been staying for the last few days at the house of Budhu Babu. Many people are coming to see him. Most of the public believe that his appearance greatly resembles that of the 2nd son of Rajah Rajendra Narayan, and the impression of the general public is that the said 2nd Kumar did not die, but was moving with Sanyasis for the last 12 years. until in the course of the wanderings, he has come home (Ex. 231).

It will be seen that this was at 9 A.M. on the 4th before the declaration of the identity.

5-5-21 3 P.M.

The sky is cloudless. No information of any infectious disease in the elaka (Jurisdiction). A Sanyasi has come to Jaidebpur, people are calling him the 2nd Kumar, and he has himself declared that he is the 2nd Kumar (Ex. 231(1)).

On the morning of the 5th May, Dr. Ashutosh Das Gupta, another important witness for the defence—the doctor who went to Darjeeling, and who was charged with poisoning the Kumar there—whose evidence, when I come to it, will speak for itself, wrote the following letter, posted before 11-30 A.M. on the 5th May, 1921.

and dated the 5th May, to Mr. Sailendra Matilal, brother of the 1st Rani: (Ex. 398).

Jaidebpur,
5th May, 1921.

An extraordinary thing, such as one has not read in a romance has happened at Bhowal. A Sanyasi Sadhu has arrived here in the house of Budhu Babu. He has declared that he is the 2nd Kumar, and his name is Ramendra Narayan Roy. He has given also the name of the nurse, Aloka. The tenants will raise by subscription two lacs of rupees, and recover his property. 5 or 6 thousand people are coming to see him every day, and some of them paying nazar. Every man and woman is firmly convinced that he is the kumar, that there can be no doubt about it. This affair has caused a great sensation. As I came and said that it was false, a hundred thousand people of Bhowal have been blaming me. I am passing my time in great trouble."

It is plain that the affair was a "tremendous sensation" as the report says. The report was composed on the 5th at about 8-30 A.M., or some time after it. The sensation had extended "throughout the estate and outside", not in the course of the night, but because people were coming to see him "daily" in hundreds since his arrival four days before, as the report says, and as the entry in the police register shows. At 9 A.M. morning of the 4th before the sanyasi had declared his identity, there was a crowd in the house, as the evidence of Jyotir Moyee Debi is, and as the thana entry records, (Ex. 321). The crowd went on swelling for I do not believe that there was a soul at Jaidebpur, unless he or she was a cripple or a woman, missed this feast of sensation, and in the middle of them, took place the declaration of identity as the people and the sister pressed the Sadhu to say who

he was, and then there was a lot of weeping, and Joydhanī (cheers and ulu 'cheers of women'). One detail of this day—that the sister gave out that the plaintiff had such and such marks was put to her as well as to the plaintiff by Mr. Chaudhuri himself. 'Is it not a fact that the marks on your person were seen, and it was given out that these were on the 2nd Kumar? (vide plaintiff's and Jyotir Moyee's deposition). The defendants can no more wipe out this atma-parichay (declaration of identity) than they can wipe out the sun, because the plaintiff says referring to a by-no-means-clear point in the transaction that no "outsiders" were present. Looking to the undisputed documents of that day, and the day after, one could almost see the house full of people, and I have little doubt that Jogendra Babu was there too if people were coming in hundreds daily as he had been coming every one of the days that had gone before

The point however is whether the sister or the children of the other sister, and her own did, in fact, recognise him, the plaintiff, that day, although he said he was the Kumar, or whether he, a Punjabi, was induced to say that, with knowledge that he was a different man, with the mad hope that he, looking different, as the defendants would have it, or looking similar, if I make a case for them to reduce the absurdity, will pass as the 2nd Kumar, or whether wish was so much father to the thought that the lady, without recognition hugged the idea and deceived herself. The defendants' theory of total dissimilarity leaves nothing except the theory of a conspiracy suddenly conceived, or conceived in the course of three days, while the man was sitting in the yard, a sanyasi, bearded and ash-besmeared, and with his flowing jata, to adopt him—a mad conspiracy to pass him as the Kumar, a singularly looking individual so difficult

to personate, although he did not know Bengali, and not a detail of so difficult a roll. That I consider impossible, and I will have to consider why a measure of resemblance such as could deceive, was not being conceded as an explanation of the direct evidence of the identity that has been given, but the other theories, including self-deception, will have to be considered too and will have to be excluded, before the plaintiff can succeed, for that might explain the singularly impressive and earnest way in which Jyotir Moyee Debi deposed before me.

No man is less likely to fall into self-deception than Rai Sahab Jogendranath Banerjee. He looked a hard, shrewd practical man, and his tadbirs which I will have to mention shew that he is what he looks, or he could not be chosen as the principal tadbirkar in the suit imperilling the estate itself. Now this gentleman was asked whether when he and Mohini Babu sat down together, and composed Mr. Needham's letter, he believed the account they were putting in. "I believed the account here. Mohini Babu wrote it when I was with him": he says.—"All the people present at the time were convinced that he was no other than the 2nd Kumar" included, he says, the inmates of the house. By inmates he meant Budhu, Jabbu, Jyotir Moyee Debi. This information that all the people including the inmates were convinced he believed to be true". I believed that the inmates of the house too were convinced that the Sadhu was the 2nd Kumar", says he. He knew the 2nd Kumar as well as any body. He had seen the Sadhu during his first visit to Jaidebpur, and noticed his appearance seeing that he says he had noticed his brown eyes. He believed that Jyotir Moyee Debi was convinced that the Sadhu was the 2nd Kumar. That means he was convinced too, though he repeats, parrot-like, that the Sadhu looked totally dissimilar. If

he was convinced, the recognition by the sister was genuine, or the man is a double of the 2nd Kumar, so far as the body goes, though he could be displaced by his mind or speech, or so that the recognition by the sister, though mistaken, was at all events honest. It will be seen that the report does not say that the man was looking different, or that he was talking a gibberish both Rai Saheb and Mohini Babu had heard him talk at his first visit at all events; but the important thing is that it does not say that the man did not look like the 2nd Kumar at all, or that one could say at a glance, as most of the defendants' witnesses came to depose, that he is different. It asks for a sifting inquiry, not police to disperse the crowd or to keep the peace. Mohini Babu was asked too, if he believed the report. He did not know the 2nd Kumar, but he and Rai Saheb were together when they composed this report. He says that on the night of the 4th he met Mr. Needham and told him what went into the report next morning. Mr. Needham believed what he said. He believed it too. Then he says he did not believe it. Then he said there was on time for belief or disbelief, the matter was too serious and urgent, forgetting for the moment the tame affair he was trying to make it in the teeth of the report. And he ended by saying that he did not believe a word of it, that it was all nonsense, did not tell Mr. Needham, so and dressed, and served this nonsense for Mr. Needham to sign, and send up to the Collector of the District as a joke. It will be seen that the report says nothing about the infamous and the mythical tea party when it gives a version of the first visit, much less that the plaintiff had said there that he was a Punjabi.

The report is the report of a believer. Even as a first information to which Mohini Babu would reduce it

was immediately after the occurrence given to one who would instantly see its untruth, if any, and who went forthwith to verify it, and were satisfied, and sat down to compose the report for the Collector of the District.

The case in the pleading that the sisters secured a Punjabi Sanyasi to play the role of the kumar, or that he was put up by "a few designing persons", or that he was put up by a few Calcutta men, as put to the 1st Rani during her cross examination is gone. The medicine-man theory is gone. You can pick it to pieces. He was not being taken from place to place as a man who could cure sterility in women, but every where said he could not, but because of the reason which made Mr. Meyer to look closely at him at Buckland Bund. He was looking like the 2nd Kumar. That took him to Kasimpur. That brought him to Jaidebpur. He goes to Jyotir Moyee Debi's house. He goes away. Jyotir Moyee Debi goes to Dacca, not in pursuit of a medicine-man, but to get him to Saibalini's house; and then when he comes again, people began to come, and see him in hundreds, and the thing culminated in the declaration of identity on the 4th May when the family began to call him Mama (D.W.76) and when the sister honestly believed as did Rai Saheb, that he was the 2nd Kumar.

This conclusion may well rest upon the single fact that Rai Saheb who knew the Kumar and who had seen the Sanyasi a few days before on his own account, thought that the sister and the other sister's children were honest in their belief; but it need not rest on that alone. Without such honest belief certain things could not happen. Although all Jaidebpur must have been there on the 4th May, the defendants do not call a single witness present then, so that the account of that day, as given by the sister and the other witnesses, confirmed by what on the

defendants' case was the first information given then and there remains the only account of the transaction. The defendants' own witness goes so far as to say that the plff. was, from that day, taken into the house, and began to sleep in Jyotir Moyce's daughter's room. He does not say where he was sleeping before and I accept the evidence that he was sleeping in the house before that day too. He was admitted into the intimacies of the family life at once. There were young ladies in the house which had hardly any separate andar, Jyotir Moyce Debi herself was young—she was on the right side of forty, and a purda-nussin. She was looking at what was going on from behind the chik-but directly the plaintiff fainted, she said, quite incidentally, that she went out to him, and people made a way for her, as she came out. No small emotion would expose her to public gaze. And then consider the family, and its ways. She was a widow, and the women of the family were extremely orthodox—it was elicited that she would not take even pipe-water on grounds of ceremonial purity which such widows affect. Such women would have a horror of having a person of no caste into the house, a man then young, and on defendants' case, of unknown traits and antecedents. And this person was taken into the house, and admitted into the family intimacies on the chance of his succeeding in playing the role of the Kumar, though he was a Punjabi, though he knew nothing about the family, and though he was looking utterly different; and she expected that this man will fight the Bhowal estate, and recover it, and did not foresee that the estate will fight to its last rupee, supposing he is not laughed or whipped out of Jaidebpur and could go as far as the court, and even then what was the chance of success, and how far its fruits? No one who is not insane would think of doing it, nobody who is not insane

did so with a telegram from the Assistant Manager stating that he and Dr. Ashu were being charged at Jaidebpur with poisoning the 2nd Kumar at Darjeeling. The event that had occurred on the 4th May was not a joke, and what account Satya Babu had received of it made him go to Darjeeling to collect evidence of death, and to hand over, or send to officials, the affidavits of death, and the Hon'ble Board of Revenue wrote on the 10th May to the Insurance company for the original papers (vide Ex. 448, 449, 450.)

The action taken was rapid enough, but in the meantime what was happening at Jaidebpur? Rai Saheb says that on the 6th the Court of Wards turned against the plaintiff. On the 5th its attitude, that is to say what attitude it will take, was not known. On the 5th May the officers of the Court of Ward at Jaidebpur were therefore free, and there were many among them who knew the 2nd Kumar. What happened on the 5th besides the sending of the report by Mr. Needham already referred to, is to a certain extent admitted, but to a certain extent only.

It is agreed that on that day the Assistant Manager and Rai Sahib and Ashu Doctor and certain other people went to Jyotir Moyee Debi's house and saw the plff. On 6th Mohini Babu drew a report of what occurred there and submitted it to Mr. Needham. The report is this: Submitted to C.M.

In obedience to your verbal order I went last afternoon to the house of Jyotir Mayee Debi with Mr. Banerjee special officer, forest officer, Head clerk and other estate officials to make further inquiry about the Sadhu who has been posing as the late 2nd Kumar tried our best to get some definite statements from him as to his identity, but he declined to answer concerning his previous history.

The Sadhu definitely informed in the presence of the marginally noted persons that his name is Ramendra Narayan Ray, that his father's name was Raja Rajendra Narayan Ray, and that his elder brother's name Ranendra Narayan Ray, but he did not give any reply to any question put to him concerning some part of events in the life of the 2nd Kumar. The refusal to reply is significant. Matters have come to such a pass that the sadhu must establish his alleged identity, or steps should be taken to prosecute him for false personification. It is needless to say that if the Sadhu be allowed to pose falsely as the late 2nd Kumar with impunity, it will tell very seriously on administration of the estate as the Sadhu has, by this time, been able to establish the sympathy of the tenants who seem to be thoroughly convinced that he is no other than the late 2nd Kumar. Under the circumstances your kind instruction is solicited as to what step should be taken.

It is reported that he will prove his identity, if necessary, when time will come before higher authorities.

Sd. M. M. Chakravarty.

6-5-21.

The name on the margin noted as present are :—

Babu Mohini Mohon Chakravarty (D.W. 117).

J. N. Banerjee (D.W. 310).

Phani Bhusan Mukherjee (D.W. 92).

Gouranga Hari Kabyatirtha, Sub-Register (called by plaintiff).

Moulvi Nurul Huq, S. I. of Jaidebpur P.S.

Ramchandra Bagchi (not called).

Ashutosh Das Gupta (D.W. 365).

Aswini Kumar Dutta (not called).

Jalad Chandra Mukherjee (dead).

Sitanath Banerjee (P.W. 977).

Kshitindra Chandra Mukherjee (P.W. 938).

Sitanath Mukherjee (P.W. 973).

Jogendra Chandra Dutta (not called).

Nashu Pradhania (not called).

Asimi Munshi of Mosakhala (not called).

Umedali Bhuian of Bharulia (P.W. 26.)

Against those examined I have put down their numbers. It will be noticed that the report of this day was written on the 6th May. In the report Ex. Z (203). 6-5-29 looks like. 5-5-29, but 5 is really 6 as Mohini Babu admits. On the 6th the court of Wards, had, as I said turned against the Sadhu according to the evidence of Rai Saheb, and according to suggestion by the defence that on that date the superintendent of police and Rai Saheb called at the house of Jyotir Mayee Debi, a suggestion put to Jyotir Mayee Debi, but not made good by evidence. In lieu of the S.P. and Rai Saheb the defence put into the 6th another witness to whom I shall come presently. It will be noticed that the report uses the word posing and says he could not answer questions about the family history, and is calling it significant, and suggesting prosecution. It does not say, of course, that the man had said at the alleged Tea party that he was a punjabi, nor that he was talking Hindi, and saying nothing about the attitude of the family, just as it had suggested in the report of the 5th that the family had not recognised him but was warning him that he could not go without giving full account of himself—a passage inserted as a kind of noncommitted officials touch with full knowledge that the family had accepted him, as Rai Saheb says.

As to this 5th May interview which got into the report of the 6th I am satisfied that it was framed to suit the attitude just taken by the court of Wards, and that it omits to state truthfully what had taken place..

I have to go into it fully, as this 5th May interview with the plaintiff might be described as the only attempt to question and test him after his appearance. Thereafter he was never faced or questioned with this end in view by any body on the side of the defendants, and this policy was carried right into the trial, seeing that the plaintiff was not asked any question, no question to speak of touching the life of the Kumar—the incidents of his lie, or in his family on the theory that he has been tutored. This I shall go into later, but as to this interview of the 5th there were a lot of witnesses present, and those who have spoken to it were certainly present.

Babu Gouranga Kabyatirtha was the Sub-Registrar of Jaidebpur at this date, and was admittedly present at this interview. He did not know the 2nd Kumar and is not a witness to identity. His father is a Mahamahopad-haya, the highest title, bestowed by Government on Sanskrit scholars, and the tol in his family dwelling house was visited by Lord Ronaldshay and by Sir Stewart Bailey. Gouranga Babu's own title was conferred by Government and he is still in service. He says that on this date—he refers to the date on which the person noted in the report were present, he had gone to see the plff. He found him seated on an easy chair, and heard that the court of Wards officers would be coming to see him. These came, he names Rai Saheb, Mohini Babu, the doctor, in charge of the dispensary, and "Many others". The Sadhu was asked whose son he was, whose brother he was and "so forth" and then Ashu doctor said, "I would put a question. If he could answer that I would take him as the Kumar." The witness was sitting by the Sadhu, and Ashu doctor by his side. Then Ashu asked in mixed Hindi and Bengali. "On the cornice of the house at Darjeeling there was a bird. Who had shot it,

and why did you rebuke him?" When he put that question somebody said, "Let him give the name to Gouranga Babu before the question is answered. Ashu Babu whispered him the name" Birendra Banerjee". The Sadhu answered "Hari Singh". Ashu said "Hari Singh had not gone to Darjeeling at all." The witness declared that the name did not tally. Whereupon Birendra Banerjee was sent for, and he said it was Hari Singh who had shot the bird. He Birendra, did not know how to handle a gun.

In cross examination he says that he does not remember whether the question was explained to the Sadhu he understood it, it was put in half-Hindi and Half Bengali, and the defence suggested that the incident was not a fact, and "I put it to you that on that day the court of Wards officers put questions to the plaintiff and he could not answer them. The answer was that he did not remember if they put any questions. Questions like what is your name etc., were put, but whether by them, or Phani Babu, I do not remember."

What questions were put are not in the report nor put in this cross examination.

Abdul Hamid, Sub-Inspector of police, still in service was at this date attached to Jaidehpur thana, one Moulabi Nurul Huq being the officer in charge. Both were present at this interview of the 5th May, though Abdul Hamid's name does occur in the report. Nobody denies he was present and in entry in the General Diary of the thana made at 4 P.M. on the 5th May, 1921 says that he, Abdul Hamid and the officer in charge were going to see the Sannyasi who had declared him self as the Raj Kumar. This officer deposed for the plaintiff with the greatest reluctance, obviously thinking, as many witnesses did, that he was leposing against the Government.

What he said was extracted by his previous testimony in a certain case. That case was defamation case which Dr. Ashu brought against a pamphleteer on the 9th September 1921 (Ex. 397). It would appear from the evidence of Dr. Ashu that he had very little to do with this case, beyond complaining seeing that he does not know that the Government pleader, Rai Sasanka Kumar Ghosh Bahadur conducted the prosecution, and the Assistant Manager was praised in a certain letter (Ex. 237) of the Chhoto Rani for his services including the success of this prosecution. The accused in that case was undoubtedly assisted by the plff. The charge was that the pamphlet had imputed that Dr. Ashu had poisoned the Kumar at Darjeeling. Even that Dr. Ashu forgot at one point in his deposition. This case was tried once before Mr. S. P. Ghose, Deputy Magistrate and once again before Mr. B. M. Ghose, another Deputy Magistrate. The trials took place at Dacca.

In this case Moulabi Abdul Hakim S. I. deposed as a witness for the prosecution. In cross examination he said.

"One evening I went to Jyotir Mayee Debi's house and I found the Assistant Manager Mohini Babu, Rai Saheb J. N. Banerjee, Ashu doctor, Gouranga Babu, Sub-Registrar and many others present there on that occasion in order to test whether the Sanyasi is the 2nd Kumar. Many questions were put to the Sanyasi, Ashu doctor also put this question." If you are the 2nd Kumar you would be able to name the person who shot a bird at Darjeeling." It is a fact that some body suggested Ashu doctor to disclose the name to the Sub-Registrar before the answer of the Kumar was given. Accordingly he disclosed the name to Sub-Registrar, Sanyasi then answered the question of Ashu and probably gave out the name--

of Hari Singh as the person who killed the bird. Gouranga Babu gave out then that Ashu doctor had disclosed the name of Birendra Banerjee. Subsequently I heard from Gouranga Babu that the answer was tested later on, and was found to be correct. Gouranga Babu told me that Birendra Banerjee was called, and asked and he admitted that the Sadhu was correct."

This is not substantive evidence. All that he says he remember now is that in amath of the Rajabari compound—he calls Jyotir Mayee Debi's house as within the Rajabari. "Giving its distance from the Rajabari proper correctly, there was a gathering of the officers of the Court of Wards and other gentlemen the Sanyasi was made to sit there in the middle of the gathering, and somebody put a question to him. Who put the question the witness does not remember, but he said that if he was Kumar of Bhowal he ought to be able to say who has shot a bird at Darjeeling. He adds that he forgets the details now, but he gave these in the defamation case. He admits that there is "no doubt whatever" that he had said what the passage quoted above say, and that what he had said then was fact, though it had gone out of his recollection. He remembers that the incident was in a math (maidan) at Rajbari, adds that the whole place, is called Rajbari, that if he had said it was at Jyotir Moyee Debi's house, it was correct.

It is plain that the witness had heard the bird shooting question being put on this occasion, but would not say that the question was put by Ashu, the man who had gone to Darjeeling and who had written on the morning of that day before 11 A.M. that the man was false. (Ex. 398 quoted above).

Another witness speaking to this day and the bird—shooting question is Umedali Bhuian of Bharuba whose

name is in the report as present. He is P.W.26. He said nothing specifically on this point in examination in chief, but in cross examination Mr. Chaudhuri elicited the evidence that Ashu doctor suggested the question as to who had shot the bird and the witness put it. What followed Mr. Chaudhuri did not ask nor did he ask what other questions were put.

The plaintiff was not asked anything as to this day's interview.

To Jyotir Moyee Debi, P.W.606, the case was put thus :

(1) The plaintiff on being asked in Hindi gave his own name as Bara Kumar's name and father's name.

(2) That the plaintiff on being asked his past history could not answer; and when further questions were sought to be put she and her family said : He will not answer any questions now, but before higher authorities.

(3) Next day the police Saheb and Rai Saheb and some Government officers came and put some questions to the plaintiff, and he could not answer them, they were told he was not prepared to answer any questions except before an official meeting called by Government; and Rai Saheb was to have met the plaintiff to question him, but directly it was known that Mohini Babu would also be there, you people'' refused to allow the interview."

The things put on the 6th have not been proved, and Rai Saheb put into that date carefully avoids it. He sticks to the 5th and his visit was on the 8th. The date given by Mohini Babu. As to the 5th the questions—what these were—had not been framed. They were not in the report.

Now Ashu doctor comes into the box and all that he says on this point is this : I saw the plaintiff once.

at the Railway station, once again at the Tea party of the 1st. Baisakh and 'on several other occasions.' He never put any bird shooting question. He admits in cross examination that he was present at the interview of the 5th. His name is on the report.

In the defamation case I referred to, he deposed twice, once before Mr. S. P. Ghosh, and once again, before Mr. B. M. Bhosh. On both occasions he had said he had seen the plaintiff twice only once at Jaidebpur Railway station before he had declared his identity, and once again at Jyotir Moyee Debi's house and that on this occasion the Assistant Manager and Jogendra Banerjee were present. On this occasion he says the Sannyasi did not say he was the "2nd Kumar Ramendra Narayan Roy," that he, the witness did not put any question as to who had shot the bird; that he did not remember if he had whispered the name to the Sub-Registrar Gouranga Babu, (Ex. 395 (II) and Ex. 395(12). Speaking of the same day, he was only once at Jyotir Moyee Debi's houses as he said then, he denies the questioning and the presence of the Assistant Manager and the rest (See. x. 466 G on Ex. 460. In short he gave two different accounts of the same day—this 5th May—and to get rid of that, talks of going more than twice. He was pinned down to the date on which the Assistant Manager and Gouranga Babu were there, and asked why he had denied that the plaintiff could not give the name. Ramendra Narayan Roy, he says he had denied that he had said. "2nd Kumar, Ramendra Narayan Roy" this coupling of 2nd Kumar was all that he had denied. Asked why he had mentioned the two occasions once at the Railway station,—he says that by 'saw' he meant spoke, the two occasions being the occasion on which he spoke to the plaintiff, and as that involves that he spoke to the plaintiff on the 5th May, the day on which the Assistant Manager and

Gouranga Babu were there, he says he did not mean by saw 'spoke. This is only a minor instance of the force to which the evidence of this witness on the major issue of death was reduced by his former testimony. He did not mention the Tea Party then of course. On the other hand he had said he had seen the plaintiff on the Railway station on the 1st. Baisakh, the day on which he left Jaidebpur.

Mohini Babu, and Rai Saheb, and Phani Babu came with a tale about what had occurred on the 5th. The plaintiff was asked his name, his father's name his brother's name and gave them all right, but could not answer when the Rajah had died, or where the Rani, the mother, had died. Instead of answering these, he began to sob. The sobbing is not in the report, not put to Jyotir Moyee Debi. These three witnesses deny that Ashu doctor put any question about a bird, and each supports the Tea party of the 1st Baisakh, and Phani throws in an account of what had occurred at Jyotir Moyee's house during the plaintiff's first visit that Jyotir Moyee Debi did not weep and that she and Satyabhama Debi bowed to the Sanyasi, which account, Rai Saheb says he had heard from him, though it is not clear, when. The whole of this account is no more true than the Tea party where the plaintiff is said to have admitted that he was a Punjabi—a thing no body mentions at the interview, or in the report of Mohini although it is suggesting a prosecution. I find that the bird shooting question was put to the plff on this day, as Gouranga Babu says, and as Abdul Hakim says, and answered, and whether the answer was right or not—Birendra denies that he was asked any thing about it—the name Hari Singh was certainly mentioned, and that was memory. Hari Singh had certainly gone to Darjeeling as now admitted, though then denied by Ashu Doctor. Next comes Mohini Babu's accounts of the 8th May—he did not go on the 6th and

7th obviously in view of the suggestion, not made good, that the S. P. came on 6th day. On the 8th all that happened was that Jogendra Babu who was with him went in to speak to the Sadhu, came out, and said that they had some idle talk, nothing to the point. Jogendra Babu supports this, and adds that one Mohini Ghosh who was taking signatures of people on a khata said; "Kumar wants to see you." He went in, got into the eastern room, the Sagor's bed room, found the Sadhu there with Jyoti Moyee and Budhu and he, Jogen Babu, asked questions like, why he had not come home so long, why he did not write where did he go from Darjeeling, and the Sadhu talked about shrines he was visiting and as to the rest said: "Pichhu Bolega" (will tell you later) and added that Sadhus never write letters.

They add, these two witnesses, that they went to the house one other day—viz., the 9th when they found a Mahommedan lecturing, and a man, called Sudhanya, singing a poem abusing the Ranis, and Ashu doctor and Satya Babu, and Jogen Babu and "we came away in the middle of the song and the lecture". Phani Babu speaks to this day to and adds a visit of his own on the 6th says he expostulated with the family for what they were doing, and throws in the detail, necessary for another point, that he suggested that the family should write to the Ranis. And to support this evidence touching the 8th the defendants produced, without any explanation of the delay, a report which Mohini Babu is said to have drawn, like the report of the 6th. I refused to admit it, in view of the fact that forgeries were being charged, and as it turns out have taken place in the suit, and apart from the order XIII rule 2 C. P. C. I was not impressed by the devices to get after thoughts propped up by an apparently contemporaneous report.

Nothing of the transactions on these two dates were of course put to the plaintiff and if these are the only two transactions on which the plff's ignorance of family details was to rest, they did not occur to the learned Counsel or his clients before.

I find that the report of the 6th May does not give a true account of what had taken place. It was framed to fit the attitude of the court of Wards on the 6th May, and the later orders which followed leave no doubt on the point. The controversy began in my opinion on the 6th May, though Mr. Chaudhuri suggested the 3rd June as the beginning of the controversy, he would like to put it back as far as possible to exclude statements under section 3 but the case as to the 5th May had not been thought of then. I agree that the controversy began on the 6th of May, 1921 at the latest. One might place its beginning on the 4th—the date of the declaration of identity in view of the kind of case it is, so that statements made by people who are dead, or cannot be found and so forth, will not be evidence though conduct will be so. That will be borne in mind even though I may mention a statement or two as I go on to explain what went on happening. But I should add in this connection that the 6th May which Mr. Chaudhuri kept vacant for Mr. Quarry S. P. and Rai Sahab, but which Mr. Quarry will not fill got filled by another witness. Mr. Kiran Ghosh who was an Inspector of Co-operative societies at Dacca at that time, and now Manager of Government Press Depot. He says he was at Kaligunge on duty when Mr. Lindsay, the Collector, who was also there got at about 9 A.M. a sealed letter, delivered by a messenger. Mr. Lindsay directed Mr. Chanda, a D.S.P. to go to Jaidebpur to inquire about the Sadhu there. And the witness and Mr. Thomas Ranjan came with him to Jaidebpur, though

it was no business of theirs, met the plaintiff, spoke to him and put to him some questions, and he could not answer them. This interview was not put to the plaintiff. It was not put to Jyotir Moyee Debi, but is a kind of substitute for what was put to her. It was not put to Mr. Lindsay in London. It is supported by no report. The account puts some words into the mouth of Jyotir Moyee herself. And it is displaced by the fact that the letter Ex. 59 which, it is suggested, was delivered to Mr. Lindsay at Kaligunge and which led to this test by a D.S.P. who knew nothing about the family was being composed at Jaidebpur at 9 A.M. according to the evidence of Mohini Babu, the Assistant Manager. Mr. Gupta was making no mistake about the hour looking to the details of his alleged journey.

In the meantime from the 4th May down to the 7th June when the plaintiff left for Dacca, streams of people, hundreds of them were coming daily to see the plaintiff. These were mostly the tenantry, but there were quite a large number of other people from Dacca and other places. It is out of these visitors that most of the witnesses on either side have come. Most of them saw him between the 4th and the 15th May. On the 15th May took place what has been called the great meeting of Jaidebpur. It was meeting called at the suggestion of Gobinda Babu by messages and notices by the adherents of the Sadhu, including the sister, Gobinda Babu's sons, and its object apparently was that the plaintiff would appear before the assemblage, so that they might see and accept him. (P.W. 288). I would come to this meeting presently, but the crowds of people who were coming every day, from morning till dusk has not been disputed, and got into the police Register :

10-5-21. 3 P.M. No rain during the past 24 hours.

The Sadhu who declared at Jaidebpur Rajbari that he was the 2nd Kumar of Bhowal is still staying there. Large numbers of men are coming to see him from far and near. Most of the general public believe that he is the Raj Kumar. No news of any accident in the eleka. Rice selling at 6 seers per rupee. [Ex. 231(1)].

11-5-21. The sky is clear. No news of any accident or infectious disease in the elaka. A Sanyasi has come to Jaidebpur. Large numbers of men are coming and going from various parts to see him, and 15 annas of the people are expressing the opinion that he is the 2nd Kumar, Ramendra Narayan Chaudhuri. Public Health not good. Prospects of Aus paddy not bad. Coarse rice selling at 6 seers. Ex. 231(2).

13-5-21. 2-30 P.M. Information has been received that a big meeting will be held on Sunday next of the general body of the tenantry to accept as the kumar the Sanyasi who declared his identity as the 2nd Kumar. A large gathering is expected. Ex. 231(3).

This indicates what was taking place during the 4th and the 15th May. He would be seated in an easy chair on the verandah in Budhu Babu's house, or out in the chatan under the mango tree, and as often as not, if not oftener, his chair would be placed on a Chauki in order that the crowd might get a good sight of him. People were coming to see him, says a witness (P.W.82) as there was no believing without seeing that a dead man had come to life "Kumar has come" says another witness (P. 23) was in every body's mouth". One witness (P. 59) like many others, brings the picture to the eye.

"I saw him a Sanyasi seated in the chatan, 500, or 600 people were there, there was only one man in the garb of a Sanyasi. He was the kumar himself. I looked at his complexion and features, and recognised him."

One witness (P. 24) says that the plaintiff addressed a few inquiries to him. "When the plaintiff addressed these questions to me, finding he was the same man I felt like fainting". Another P.W. 55: "We had no speech with him. We wept our hearts out. He wept too, and tears trickled down his cheek." I quote only just enough to bring out the scene the emotion which Mr. Needham in his report tried to express.

This was going on day after day, and the whole conduct of the plaintiff will have to be taken into consideration in judging whether this, for the Kumar, was extra-ordinary behaviour this looking for arks this sitting at one place and giving a sight to people, this weeping, this speaking to common folk who used to keep their distance. Why did he not go quietly to Mr. Needham, and demand possession of the estate? Mr. Chaudhuri asked me to consider this question. If the Kumar were "well educated well polished" aristocrate the Kumar put to Mr. Ghosal (commission) and in effect, to the plaintiff in cross examination, there would be much in this account that would be odd, much in this behaviour that would be extraordinary, and even incredible though 25 days after plaintiff went and met Mr. Lindsay, the Collector. I have heard the case for two years and a half, know from the evidence perhaps more about him than most people, and have sized him up, and will say exactly what sort of man he was; and then judge this behaviour when I come to discuss him; but supposing a finger impression of the kumar were found, and that tallied with the plaintiff's, no behaviour will stand in his way, and one will have to consider not only what the Kumar was really like, but also what he was likely to have been left after the 12 years' terrible experience, supposing he had gone through it.

Crowds of people were coming and seeing him till the 15th and afterwards till he left Jaidebpur on the 7th June, but on the 15th took place the meeting. On that day Satya Babu and Rai Bahadur were at Darjeeling collecting evidence of death as I said, and Ashu doctor was at Calcutta, he had left 4 or 5 days after the 5th May and had met Satya Babu, as these admit, and letters under the signature of Ashu Babu's compounder who did not know English were appearing in news papers, as Ashu Babu admits. Propaganda in support of the plaintiff began too, but apart from writings in the news papers which must have appeared, other propaganda in the shape of books and pamphlets began, the defendants suggest, in Jaista i.e., after the 15th May (vide P.W. 34 for this suggestion). Till the 15th what was happening would seem to be spontaneous, as the report of Mr. Needham indicates, it began since the beginning of the 2nd visit of the plaintiff to Jaidebpur on the 30th of April. After the 15th May many books in prose or verse appeared, more on the side of the plaintiff than on the side of the defendants, judging from the books produced before me but this propaganda should be dealt with a little more fully in its paper sequence, that is after the meeting.

The meeting was held on the chatan in front of the Rajbari which I have already described. It was a huge concourse of men, nominally presided over by Adinath Chakravarty, a large Talukdar of Barisaba. I say nominally as it was really a huge collection of men assembled for the purpose of seeing the Kumar. It was a sea of heads from Budhu Babu's house to the Rajabari, and people had come from all parts special trains ran. People were collecting from the morning. Some ten thousand people had come according to the entry in the police-register which seems to be a moderate estimate. The

defendants were eliciting by cross examination that the Rajbari was specially guarded. Chira, as one witness said was selling at one Rupee a seer, to indicate the size of the crowd, and a witness for the defendants examined on commission admitted this meeting and its size. It is needless to mention the numerous witnesses who attended it, and speak to it, and depose that the plaintiff and Budhu came to the meeting on an elephant, went round the chatan, but as he was going round, and the people were cheering, him, and calling him the Kumar, rain came and dispersed the meeting. One witness for the plaintiff, Mr. Harendra Ghosh, then Sub-Divisional officer of Dacca for the area in which Jaidebpur lies was on the spot on duty, not in connection with the meeting, but in connection with a case and he swears that the plff. came to the meeting at about 4, as the other witnesses say, and on seeing him arose the cry. "Victory to Kumar". It was difficult for me to understand why the defendants were attacking the meeting, suggesting that it was not properly constituted, as though the question is one of votes. Towards the end of their case after innumerable witnesses for the defendants had referred to the meeting in fixing a date, when their 407th witness was in the box, they came out with a case—that the plaintiff did not come to the meeting at all—that it broke up at 3-30 and 4 P.M. This witness, a menial employee of the estate, cannot displace the evidence of the many witnesses including Jagadish for defendants and including many gentleman who saw the plff. come to the meeting in the sense that he went round, and was received with acclamation by the crowd. Before the 407th witness for the defendants, every one on their side was fighting shy of the meeting they did not see it, were ill or away or on duty some where, or saw only the tail and of it (D.W.

19, 40, 48, 84, 100, 108, 220, 356, 376, 379) and one did not see a soul on the chatan though he passed it after 12 A.M. when, looking to the evidence it must have been full.

The acclamation by the crowd does not prove the identity but the want of it could imperil it, and it absolutely puts an end to the amazing case that the plff. had been set up by a few persons of Calcutta or Dacca. It is absolutely displaced by the facts that had gone before, the facts that followed this meeting, and the meeting itself. It is idle to contend that the plaintiff, an utterly different-looking man, has been set up by a few as the result of a conspiracy, that the tenantry did not know him at all. It will appear below that they paid him large sums as nazar and rent. It was probably expected because of an order issued to Naibs (Ex. 353 (1) to see that no tenant or any body else deposed for him, and I do not wonder that the defendants began to ask the court for an order to stem the tide of evidence which this amazing case had provoked, by forcing the plaintiff to close. The case of a narrow conspiracy was breaking down, and it became increasingly difficult to say what could have been said of a few witnesses that they were seeing that the plaintiff was different, but calling him the same.

One noticeable incident of this meeting day was that Babu Ananda Chandra Roy, the famous pleader of Dacca, who knew the Raj family—intimately the kumars used to call him uncle (P. 660) came, and was closetted with the plaintiff for about an hour, and came out, and said some thing to the gentlemen collected in the house in the morning. He said that the Sanyasi was the Kumar which, in view of the conclusion that the controversy had already begun, is no evidence, even though at the date

of the trial he, Mr. Ananda Roy, had lost his testimonial capacity by reason of age. It is agreed however that he became 'one of the staunchest supporters of the plff. and Mr. Lindsay, in one of his letters, mentions this fact (Ex. 435) and the defendants themselves made a point of it when discussing a certain point connected with the visit of the plff's guru.

The whole account of what Mr. Ananda Roy did, could be collected from the evidence of the witnesses going to this point (P.W. 997, 985, 852, 806, 909, 959, 961, 967, 63) and I accept their evidence on the point. I would mention specifically the evidence of Mr. Satish Chandra De, a former Municipal commissioner and respectable citizen of Dacca.

On other thing connected with this day is that Brojo Babu, the husband of the youngest daughter of the Rajah, came to see the plaintiff on this day. He had not come before, nor his wife, though they had been informed before (P. 938), and the matter need no informing. His wife came to see the plaintiff some three days after the meeting. (vide account below.) It looks as though they were holding back, and neither has been examined by either side. Their conduct, as will appear below, will speak for itself, and a reason why they were holding back or could not depose, will transpire.

The meeting was held on the 15th the 1st Jaista. Before the 13th the opinion of the standing Counsel was sought as to whether the plff. could be prosecuted. This opinion is dated 13-5-21 (Ex. 357). It was to the effect that there would be no offence until delivery of property was induced by deception and so long as this might be supposed to have been induced by the tenant's own doubts, a prosecution would be premature. Many things happened

after this opinion was given, but no prosecution ever occurred beyond forbidding him to go to Jaidebpur. On the 10th May, Mr. Lindsay had drawn his report against the plaintiff. Rai Bahadur, the G.P. had gone down to Calcutta, met Satya Babu, and both and the barrister had gone up to Darjeeling to collect evidence of death. They were at Darjeeling on the 15th. On the 16th the Moharajadhiraj of Burdwan wrote to Rani Satyabhama, the grand-mother, referring to her inquiry of 1917, and warning her not to be misled by the beauty of the Sadhu, but to form her own judgment, seeing that she was the senior most member of the family and what she would say most would believe (Ex. 266). This letter is no evidence on the question of identity, and there is no evidence that the Maharajah and the G. P. who were then at Darjeeling had met, or that this warning to Satyabhama Debi was the result of any admission as to her attitude towards the Sadhu. The plaintiff stayed on at Jyotir Moyee Debi's house. The streams of visitors continued. I do not believe any minor officer of the estate went to him after the 5th May as the attitude of the Court of Wards towards the Sadhu had been made clear on the 6th, as Rai Saheb said (vide also D.W. 391). None of them went to the meeting of the 15th May, and the father of an officer who came all the way from Tangi to attend the meeting went to his son's basha before coming to it, and never came out (D.W. 283). An officer had possibly come out to see it, and this went into a charge against him 15-6-21 (Ex. 208). On the 28th May had come a formal order from the Collector saying that the Board of Revenue would decide the matter of the Sadhu, and until it decided that he was the 2nd Kumar, the officers were not to produce belief that he was so (Ex. 205).

In the meantime the plff. was staying on, and an association had been formed called the Bhowal Taluqdar and Proja Samiti to raise funds with a view "to establish the kumar in his legal position by legal means" (P.W. 228). Babu Digendra Narain Ghosh of Harbaid, a big and well-known Taluqdar of Bhowal became its president, and became one of the staunchest supporters of the plaintiff. He is the gentleman for whom the 2nd Kumar had executed a deed (Ex. 7) on 12-4-09 his last business transaction before he left for Darjeeling. The Samiti had regular office bearers, held its first meeting on the 4th June (Ex. 21), employed people to collect subscriptions, raised large sums, held its last meeting at Jaidebpur in Kartick 1329 (November, 1922) opened, after that, an office at Dacca, and then ceased to function. "As the plaintiff started collecting rents" (P.W. 228). The last point is disputed that the plff. ever collected rent but the rest of the facts has not been questioned, and will appear in the evidence of Digendra Babu (P. W. 228) and Jagadish Babu, a former member, but examined by the defence on commission.

Three or four days after the meeting Tarin Moyee Debi, the youngest sister came from Dacca—she was living at Dacca with her husband, Brojo Lal Babu, the pleader at Dacca. She saw the plaintiff, fell at his feet, and wept. She lay down placing her head on his thigh, as younger sisters do, and asked "How could you keep away so long?" (Jyotir Moyee Debi P.W. 660 and Mokhoda, on commission). Her subsequent conduct, spoken to by perfectly disinterested witnesses, and one act, now done and not disputed—in fact admitted by Mr. Lindsay—confirms the truth of the testimony as to her conduct at this point of time, though for reasons which will appear, she has not disposed. The act which she did know, and as to which

there is no dispute, is that she joined in a petition to the Collector made by Jyotir Moyee Debi and Govinda Babu during her five days visit i.e. before the 23rd May, asking that there should be an inquiry into the plaintiff's identity. Mr. Lindsay admits that there was such an application. Satya Babu had heard of such an application. The application was called for, but produced by the Collector, although it appears from Mr. Lindsay's evidence that a file was made of all papers relating to the Sadhu and these would be in charge of the Wards. Deputy Collector, as Mr. R. C. Dutta (D.W. 435), also says. No notice was taken of the petition, and although numerous witnesses were being examined to prove death at Darjeeling, the sisters, or the plff. were not asked a word, in fact nobody of Jaidebpur or Dacca was examined at all on the question of identity. No blame attaches to the Court of Wards for what inquiry they, or Satya Babu, chose to make. They could tell the plaintiff to go to Court which they afterwards did, but they did not tell that at once, but raised false hopes, as will appear as I go on, and it is idle to contend that the inquiry, nominally held by the Collector, but really directed by Satya Babu, and G.P. who was admittedly acting in the 2nd Rani's interest, as will appear when I come to deal with the inquiry and what it produced, was to find out the truth. It was to collect a brief.

Instead of any order on this petition came the order that the Board was going to decide whether the plff. was the 2nd Kumar or not, and that the officers were not to produce belief that he was so. (Ex. 206). This was on the 28th May. Mr. Lindsay had himself made up his mind before the 10th. He had looked for the rain report, saw that there was no rain at Darjeeling on the 8th May, 1909, thought the story of the rain in the cremation

ground a tale, and was convinced that the man was an imposter. He insists upon the rain report as the sole ground of his belief, and one would suppose, looking to his evidence, that he hardly needed the affidavit of death of Col. Calvert which he had seen too Satya Babu had sent that from Calcutta, as Satya Babu said, just as he handed a copy of that to Mr. Lethbridge in the Board of Revenue. This conviction produced by the rain report, and by Satya Babu led to his report of the 10th May, and to his approval of the journey of Rai Bahadur to Darjeeling to present this report to Mr. Lees, the Hon'ble Member, and that is how he and Satya Babu met at Calcutta, and proceeded with a barrister to Darjeeling to collect evidence of death. This portion of the inquiry—the taking of statements of people who knew any thing about the cremation during this trip was the idea of Satya Babu and G.P. executed doubtless with the approval of the local authorities, or a Deputy Magistrate would not record the statements, even though the barrister aforesaid was his brother-in-law but Mr. Lindsay received the statements, and forwarded them to the Board of Revenue, with the opinion aforesaid of the Standing Counsel, and “the notes G.P. of Dacca recorded at Darjeeling,” on the 25th May, 1921 (Ex. 436). His mind, already convinced by the rain record, and Col. Calvert's affidavit, had therefore reached absolute certainty on the 25th that the plff. was imposter. His own evidence does not indicate anything different, and he stresses this certainty of conviction from the day he looked up the rain record with greater force than what I say would convey.

While he was in this state of mind, and while he was arranging to send a police man to the Punjab to trace the antecedents of the Sanyasi seeing that the police officer left Dacca with an officer of the court of Wards on the

31st May, that is to say, when he had come to know nobody knows from whom, that the plaintiff was a Punjabi, the plaintiff appeared before him in his house. He had left Jaidebpur on the 27th May apparently in compliance with a letter written by Brojo Babu to Jyotir Moyee Debi, asking her to come to Dacca with the "Kumar". He presented himself before Mr. Lindsay on the 29th with two pleaders and a local zamindar. Mr. Lindsay thus records the interview : (Ex. 358).

"The Sadhu came to-day about 11 A.M with Babu Surat Chandra Chakravorty, Babu Peyari Lal Ghosh and, I think, the Kasimpur Manager. He said he wants some arrangement made about his estate so that the tenants could be benefitted. I explained that the Board of Revenue must hold him not to be the 2nd Kumar as they have carried on, the work of the estate on that assumption for many years. I said he could prove his identity in court in a suit, or if he preferred to produce his evidence before me I was willing to record it. He agreed to the latter procedure, and the pleaders said they would file a petition to-morrow for such an enquiry. They asked that the Board might pay the expenses and I replied that if they put in a petition to that effect I would get orders on it.

"(2nd Kumar). In reply to my questions the Sadhu told me that he had been ill for 2-4 days of phenumonia before he lost consciousness in Darjeeling. He could not remember the name of the house in Darjeeling where he lived. He went from Joydebpur to Darjeeling, that he was not ill at Jaydebpur except from a boil just above his right knee which occurred within 10 days of his going. There was no special cause of this boil, he did not remember when he was in Calcutta before that; that he

recovered his senses in the jungle in the hills in the presence of one Sadhu who has since been his Guru, that the sadhu said he had been senseless for 3—4 days, that the sadhu told him that he had found him lying on the ground as if he had been thrown there, that his body was wet with rain as it had been raining before he found him, that the Sadhu did not say whether he found him in the day, or at night.

Sd. J. H. Lindsay,

29-5-21.

The Sadhu agreed that the rents should be collected as usual by the estate officers. The pleaders urged that the tenants would have less objection to paying if the receipt were given in Bibhabati's name leaving out that of her dead husband.

Sd. J. H. L.

29-5-21.

On the margin of this document he notes.

"The Sadhu appeared to be an upcountry with a beautifully clear skin with no sign of syphilis. His hair was golden rather than red like Ati Kullah's."

Sd. J. H. L.

29-5-21.

I propose to discuss these documents with the other admissions of the plaintiff said to have been made to other witnesses, but it is enough now to say that Mr. Lindsay has no independent recollection of it except that the conversation was in Hindi, that the three persons who had come with the plaintiff were not present during the interview, that he, the plff. mentioned the name of his guru, Dharma Das Naga, tattoed on his arm, that the plff. had beautiful golden brown hair and beautiful

skin. It will have to be seen how far Mr. Lindsay understood him, and recollected what he had said, seeing that Mr. Lindsay is not sure that he made the record during the interview, though it must have been made on the same day. Two things are however plain. The plff. was not talking punjabi, or the peculiar—unintelligible—Hindi of Atul Babu which is the defendant's case. And he went, unasked and unprimed to the lion's den, and talked sense, and alone with the Collector, though he is not astute. In fact he has been described a puppet, backed by clever people in the back ground.

I consider this facing the Collector at this point of time an extremely important fact in this case.

This interview was on the 29th May. Mr. Lindsay's conviction produced long before this date by the rain record and Col. Calvert's affidavit, and by the statements of the Darjeeling witnesses recorded before this date, found expression in the following notice in Bengali which he caused to be published with the concurrence of the Court of Wards. (Ex. 432).

Notice is hereby given that the Board has got conclusive proof that the dead body of the 2nd Kumar of Bhowal was burnt to ashes 12 years ago at Darjeeling town. It follows therefore that the Sadhu who is calling himself the 2nd Kumar is an imposter. Who ever will pay him rent or Chanda will do so at his own risk.

With the permission of the Board of Revenue,

J. H. Lindsay.

Collector, Dacca, 3-6-21.

The notice has been referred to as the Imposter notice of the 3rd June, and will be so referred to in this judgment. On the 7th June the plff. left Jaidebpur. The

date has not been disputed, and one gets it from a letter of Satyabhama dated the 8th June (Ex. 54). The letter runs thus :

“I am very anxious not having received any intimation of your having reached Dacca. Reassure me by giving good news of yourself, and Jyotir Moyee Debi, and Sagor, and the rest, and write to me daily to give me good news of yourself. You are my lost treasure. Separated from you I am living like a mad woman. Let me know when you are coming home.”

The lady was illiterate, except that she could write her name. Her signature on this letter has not been questioned and the statement in this letter, is not evidence though she is dead, as the controversy had arisen, but her conduct certainly is, and this will appear by and by. The cause of the defendants is that this lady who died in 1922 was old, and blind, or as good as blind—evidence was led to shew that (e.g. Saibalini commission). I shall come to this point later, whether she was blind, or how far that would bar recognition of a grand-son supposing the plaintiff is the grand-son, but the case would seem to suggest that she had fallen into a mistake.

It is agreed that the plff. since his arrival at Dacca on the 7th June 1921, was not allowed to go back to it until 1931, and then only for the limited purpose of causing certain witnesses examined on commission, and for the time necessary for that purpose (Ex. 362). He settled down at No. 4 Armenitola, Dacca rented house, next to the Armenian Church, as a member of Jatir Moyee Debi's family. Here too, as at Jaidebpur, he was seen by numerous visitors, and out of these, quite a larger number of witnesses including some on the other side have come. He would sit in the outer room, and speak to the visitors

who came to see him, though there is a question as to whether he talked Bengali or Hindi. The case of the plff. is that he was talking Bengali since the Atma-parichay of the 4th May, though he could not drop, and still retains a trace of Hindi into nation. According to the defence, he could not speak or understand Bengali at all, at this time in 1921 (Vide this put to Jyotir Moyee) and their suggestion to Mr. Ghosal (on commission) that he could not speak Bengali even in 1924, though one does not see anything so outright as to the year 1924 during the trial. To this point of the plff's speech I shall come later.

About this time it is impossible to fix the exact time but about the latter part of May began to appear pamphlets in prose or verse, on the subject of the plff. and generally, as far as one can judge from the copies produced, in his favour (P.W. 33, 9, 220, 326, 91). Hawkers were selling them everywhere. One witness (P.W. 30) composed songs, and went about—singing them in the villages. Another (P. 434) put these in his kabigan (e.g. Ex. 30) and this inferentially was sung and recited before crowds which a kabi attracts. There were lectures in the villages to raise the chanda (P. 633, 221) and the controversy was raging in the papers (P.W. 91 and Mr. Chakladar on commission). Those against the Sadhu were not altogether quiescent. There were tracts and verses against the plff. too e.g. Bhowale Bhuter Kanda, and a controversy means two parties, though one party had nothing that could be sung. This propoganda will have to be borne in mind in estimating the direct evidence on the question of identity, but is otherwise irrelevant, though the learned counsel for the defdts. was trying to pick up things in these books, as though they were admissions of the plff. and putting to the witnesses the things against the plff.

that were being said at the time (P.W. 377, 228, 680, 77, 193, 262, 326, 358, 387, 958, 631, 680, 921).

The imposter declaration was made on the 3rd June. The plff. left Jaidebpur on the 7th. On the 10th June the attempt to publish this notice led to a riot at Mirzapur, and a man Jhumar Ali was shot dead by the Police (D.W. 3). The servants of the Bhowal Court of Wards were warned on the 13th June that if they directly or indirectly espoused the cause of the Sadhu they would be liable to summary dismissal (Ex. 207). Tenants were apparently refusing to pay rents without the name of the plff. on the receipts (Ex. 343); and orders were going out to take out certificates for rents against tenants obviously on the ground, as one order expressly said, and the rest sufficiently clearly, state (Ex. 211, 218, 340 to mention those of July 1921 only). The Court of Wards was justified in maintaining their possession and putting the plff. to the proof of his claim. Its proceedings in this behalf are irrelevant, except so far they reveal any significant conduct, or anything that detracts from the value of the testimony on their side. A Naib examined for the defdts. for instance says that if he admitted that the plff. was the Kumar he would lose his post of course (D.W. 309). Orders were issued to Naibs to see that no tenant of the estate or any other witness deposed for the plff., and a naib was asked to explain why he should not be dismissed seeing that a man within his charge had come to depose, and that was proof that he was supporting the Sadhu (Ex. 353, 353 (1)). You can keep your servants on your own terms, but if they come to depose, the court will look to the terms.

The plff. stayed at Dacca from the 7th June 1921 to a day in Asar or Sraban 1331 (July-August 1934). This

date appears from the evidence of the witnesses including Jyotir Moyee, Sagar Babu (P. 977), Monmohan Ray (P. 1037) and has not been disputed. On this date he left for Calcutta.

Before I turn to his proceedings in Calcutta, I would mention some of the things that took place at Dacca and will have a bearing on the evidence. He was living with Jyotir Moyee and her family. He was accessible to all comers, and numerous witnesses including some on the side of the defdts. saw and spoke to him there. Mr. K. C. Chunder, I.C.S., was one of them. He, the plff. was calling upon respectable people who knew the family, such as Hem Babu, the zemindar of Dhankora, Babu Ashutosh Banerjee (P.W.951) one of the richest zamindars of Dacca. He was attending functions. One of them was at the house of Mr. Sankhanidhi, another rich man of Dacca (see photo). He attended the upanayan of Phani Babu's son held at the house of Mr. Pakrashi, his father-in-law at Dacca. Phani Babu denies it of course, but witnesses including a pleader (P.W.961) say so, and nobody of the family of Mr. Pakrashi has come to depose of course. He was driving about in the streets of Dacca in tom-tom, just as the 2nd Kumar did before 1909. He would drive the tom-tom himself (P.W. 326, 666, 739, 450, 472, 602, 789, 833, 915, 918, 901, 792, 806, 961, 977, 1002, 970 976 918, 1009, 1015, 919). Nobody has come to deny it, the thing was occurring in the streets of Dacca. Mr. Mayer saw him on a tom-tom at this time. Sarba Mohan Chakraborty, a witness for the defdts. (on commission) called at his house at Armanitola one day, and as he was there, the plff. left in tom tom. The witness says that the plff. drove the tom-tom himself. This ability to drive a tom-tom was, according to the evidence which nobody has denied, seen even when the plff. was at Jaidebpur. It

will have to be looked into further, as I go into the identifying marks or traits.

The plff. arrived at Dacca on the 7th June as I said. He was still wearing his beard, and long hair. He had given out from the beginning the name of his Guru, Dharma Das Naga tattooed on his arm. He according to the plff. was one of the four Sanyasis who rescued him from the cremation ground of Darjeeling. He shewed the tattooed name on his arm to Mr. Lindsay in May 1921 'From the beginning' says a notice issued by the asst. Manager, the Bhawal Sanyasi's party had declared that his guru Dharma Das will appear. (Ex. 212). Upon arrival at Dacca Jyotirmoyec Debi arranged to find him, and to bring him to Dacca. She sent out Jabboo and Jiten first. They could not find him. Next went Sagar (P. 977) her son-in-law, and one Atul Ray, and a Sadhu, Mohabir, and these found him, and brought the Guru to Dacca on a day in Bhadra 1921. The exact date occurs in a letter of Mr. Lindsay, and this date, the 26th August 1921, the defdts. suggest and I accept. He, the Guru left on the 30th August, the date suggested by the defdts. to a witness for the plff. (P. W. 1040).

This visit of the Guru Dharma Das Naga is an admitted fact in the case. The plff. says that he left for fear of the police. The case of the defdts. is that he left because he had made a statement before an Honorary Magistrate in the Punjab that the plff. shown to him on a photo, was his Chela Sundar Das who, before he became a Sadhu, was a cowherd of Aujla in the district of Lahore and called Mal Singh. It will be necessary to go into this topic later.

Towards the end of Bhadra the plff. shaved off his beard, but retained his jata. He had started putting an ordinary dhuti, and clothes, since his arrival at Dacca, and

had discarded, as I said his lengti from the day of the Atma-parichaya. One way of fixing the time at which a witness had seen him to ask him, as both parties did, as to whether he had a beard then.

In the meantime, on the 1st. July, 1921, the Asst. Manager received a report from Surendra Chakravorty who had gone out with Inspector Momtazuddin into the Punjab—they set out on the 31st May—that the plff's name was Sunder Das, and that he is a chela of Dharma Das (Ex. Z 347). On the 2nd July the Manager forwarded a telegram from Bibhabati Debi, the 2nd Rani, that the antecedents of the man had been traced.

All this in 1921. Throughout this year and for some time during the following year, the collection of evidence to prove death at Darjeeling was going on behind the plff's back (Vide Ex. 428 to 431, 435 to Ex. 447, Z342, Z340 etc.) Steps were being taken in the estate to prevent collection of the chanda which was going on, and which, the evidence is, aggregated to a lac and a half of rupees in all, till this collection of chanda ceased, and collection of rent began. Defdts suggested that out of this chanda the plff. spent Rs. 10991 on the Defamation case. This defamation case was instituted by the said Dr. Ashutosh Das Gupta against Purna Ghose, the author of a pamphlet, "Fakir Beshe Praner Rajah" (The lord of our heart in the garb of a Sanyasi), and the printer, Satis Roy. The case was instituted on the 9-9-21 by a complaint by Ashu doctor, and the charge was that the book had imputed that the doctor had poisoned the kumar at Darjeeling. The prosecution was conducted by Rai Bahadur S. C. Ghosh, G.P., and there is little doubt that the prosecution was carried on, or helped by the estate, and the defence by the plff. It ended in a conviction of the accused in the High Court, and its success was mentioned by the

3rd Rani as the success of Mohini Babu, Asst. Manager, (Ex. 237). It is in this case which was tried twice, and in another suit instituted in 1921, and heard in Dec. 1921, that Ashu Babu and Birendra, both of whom had gone to Darjeeling, gave an account of the circumstances connected with the death and illness of the 2nd Kumar which may be described as the earliest account given of the matter. It is worthy of note that before these cases were heard Mr. Lindsay wrote to the 1st Rani, and secured from her, the telegrams connected with the illness and death of the 2nd Kumar (Ex. 55), and Ashu Doctor, then in private practice, was appointed on 17-1-22 doctor in charge of Jaidebpur dispensary after a resolution of the Dispensary Committee dated 3-11-21. (Ex. 346).

The year 1921 was marked by a tragedy. On the 24-9-21 Mukunda Guin, the Secretary who was one of the Darjeeling party was murdered in the streets of Dacca. His dying declaration was that he had no enemy, but he had written things against the plff. in the papers (D.W. 405).

The year 1922 arrived. The plff. was living at Dacca. On the 14th July Satyabhama Debi, the grand-mother, arrived at Dacca. The evidence indicates the date, and it appears in the letter which she wrote to the 2nd Rani upon her arrival at Dacca (Ex. 58). The letter, undated, was tendered to her on 24-7-22 at 19, Lansdowne Road as she came to admit, but was refused. The letter was in Bengali and reads thus : (Ex. 58, 58 (a)).

“Infinitely blessed Bibhabati Debi

Ramendra Narayan, the second son of my son, Rajendra Narayan is alive.

The man who came to Dacca a little over one year ago in the garb of a Sanyasi and whom numerous tenants of Bhawal and many bhadralogs of Dacca acknowledged to



**Rani Satyabhama Devi—The grand mother
of the Plaintiff.**

be the 2nd Kumar I have seen him carefully. I saw him first at Jaidebpur and for the last few days seeing him every day at the basha at Dacca. There is no doubt in my mind that he is my second grandson, Ramendra Narayan Roy. Though I am old, my sight, I think, is still good, and you know very well how at the Sradh after his alleged death there was a proposal to hold 'kusaputtalika', and why it was not held.

It is my conviction that you need only come and see him and no doubt will be left in your mind. Since his arrival at Dacca none of you have seen him with your own eyes. May be you only heard things from people, and read things from papers.

I therefore invite you affectionately to come in order that the truth might be declared. Do come therefore, see things with your own eyes, and save the honour and fame of the family of my distinguished husband by doing what you conceive to be your duty according to justice and religion".

Sree Satyabhama Debi.

Abinash Chandra Mukherjee who was her business man and constant attendant, says that he wrote this letter, according to her instructions, and he gives a full account of this letter; how she brought out her seal herself, and put it herself. It is not necessary to go into this matter whether she stated her true opinion here—though I see no reason to reject the account—seeing that her statement is not evidence, and her true opinion will have to be ascertained from her proved conduct, but point is that the 2nd. Rani knew that this letter was from Satyabhama Debi, as she says, but refused it. That is no admission at all of its contents nobody says so—but it will have to be borne in mind when her conduct comes under review.

Upon arrival at Dacca Satyabhama Debi wrote this letter and did two other things. On the 20th July 1922 she caused her eyes to be examined by Col. Mc. Kelvie, I.M.S., Civil Surgeon, of Dacca and got from him a certificate as to her vision. (Ex. 74). It was being said then, as the 2nd Rani admits, and as evidence of Phani Babu at the trial indicates that her sight was bad, and faculties impaired, which would seem to indicate what she was saying. The other thing which she did was to write to Mr. Drummond a long letter dated 29-7-22, called for but not produced; Ex. 274 is a copy of that letter. I quote portions of that letter.

Sir,

.....

I received your letter of the 25th May in due time. I am obliged to you for the regard you have shewn to my feelings, although you have been unable for official reasons to accede to the request made in my letter of the 8th Jaisa last.

Acting on your suggestion I have taken the trouble to come down to Dacca, and met the "Sadhu". Then she goes on saying how she had met him daily, proceeds to give reasons for her opinion, adds certain facts connected with the alleged death and Sradh of the 2nd Kumar, points out that the inquiry held exparte could not give a true result, that the wives of her grandsons had not come to see the Sadhu, that the Rani Bibhabati is living now in the care of her brother, and it is not to his interest to disturb the existing arrangement, that she will bear the cost of having the evidence collected against the plff. examined by eminent and neutral lawyers, that there is no defect in her vision that she invites Mrs. Drummond to come and see her, and so forth.

No notice was taken of this letter, just as no notice was taken of similar petitions by the sisters, as Mr. Lindsay admits.

On 15-12-22 Satyabhama died. She died suddenly, and at the house of the plff. where she had been staying since her arrival in July. I would go into her conduct later, but it is agreed on all hands that she was a very pious lady devoted to religion, and her prayers, and strict in her principles that she would not take pipe-water as unclean for widows (See Chhoto Rani, Saibalini, D.W. on commission to mention only two). She died at the age of eighty or thereabouts. One must consider, quite apart from her statements, what induced this lady the widow of Rajah Kalinaryan, accustomed to live in a palace, associated with her husband's memory to come and live in a small hired house at Dacca, till the end came.

She died at about 11 P.M. in the night. Plff. was one of those who carried the bier, and it was he who performed her last rites, including the mukhagni. She was cremated at Kaligaon, a suburb of Dacca in the course of the night, but the cremation was going on when the day broke. Tarinmoyee, the youngest sister and Jyotirmoyee and other relations, such as Satyabhama Debi's brother's son, Radhika (P.W. 4) were present (Vide P.W. 806, 937, 645, 938, 977) the scene near the burning pyre is in a photo (Ex. IV). It is agreed on all hands, and the defdts. insisted upon it when a point connected with Darjeeling needed it, that the dead body of a brahman could not be touched by a non-Brahmin neither Shastras, nor usage, permit it (Vide P.W. 1022). On the defdt's theory this Mukhagani by a Panjabi, or a man of unknown origin was an enormity, and on their theory, known to be such. There is no evidence that there was any protest by anybody.

Rani Satyabhama Debi's Sradh was performed on the

11th day from death, as usual, by the plff. It was a great affair held in the compound of a big house at Dacca at Banglabazar. It has been deposed to by numerous witnesses and attended by some three thousand people, tenants pleaders, people of the highest position, such as Babu Ananda Roy, the well-known pleader of Dacca, Hem Babu, zemindar of Dhankora, Dines Babu and Kesab Babu zemindar of Murapara, many relations, many Brahmins, the family priests, the family guru, the pundits. Tarinmoyee Debi was certainly there, and also Saibalini Debi (See for Tarinmoyee; P.W. 2, 3, 4, 5, 35, 64; as to Saibalini see 852, 660). The plff went to the river, and offered Parak Pinda (P.W. 54). The function got into photos (Ex. V, VI, VII VIII). The defdts. could not get a single witness to deny any detail of this affair, and it was just what the Sradh of Satyabhama one would expect to be like. It was however on the defdts' theory another enormity and known to be so by every relations, every gentleman who knew the Kumar.

It is right to observe that you cannot become the Kumar by performing a sradh, or by doing a mukhagni, but one would look at it when you say that the man looks utterly different, or when one has to deal with the question of a conspiracy by a few partisans.

In 1923, took place a rather important incident. Mr. K. C. De, I.C.S., then Hon'ble Member of the Board of Revenue which is the Court of Wards, paid a visit to Dacca. Jyotirmoyee Debi sought an interview, and Mr. De wrote to her as follows : (Ex. 200) a letter in Bengali which I translate as follows :

Dacca,

7-8-23.

"I have received your letter of the 29th Sraban. You have expressed a desire to come and see me at my basha.

You are a lady belonging to a very high family, and I do not think it proper that you should come and see me at the Circuit house. You can send your son-in-law on Thursday next at 8 A.M. and say all that you have got to say by him. I shall hear all that he says and pass suitable orders.

Sd. K. C. De.

Member Revenue Board.

Jyotirmoyce Debi.

The letter is franked "K. C. De. member Board of Revenue, Bengal".

The document is, in my opinion, a public document, but whatever it is, the interview with the son-in-law, Mr. Chandra Sekhar Banerjee took place. Mr. K. C. De. admitted this letter, and the interview with a son-in-law; and though he could not identify him he was present in court; he said that he might be the son-in-law who came. The interview lasted 45 minutes, and it is agreed that at this interview Mr. De suggested that the plff. should put in a petition, as no action could be taken on a petition by the sister, or grand-mother, or tenants. Chandra Sekhar Babu says that he wanted an open enquiry into the identity of the plff. and Mr. De said that he could not hold an enquiry because Ram says this, and Shyam says that, but if the plff. himself did anything something could be done. Mr. De recollects that he did make a suggestion at this interview with the son in law that the plff. should himself send up a petition and that he did so, lest the plff. should repudiate it. So far it is perfectly clear. Mr. De speaks of another interview in 1926 which is really this interview, and at which he says the plff. was present. That I shall go into when I deal with the plff's admission at certain alleged interview, and it will appear that the interview of 1926 which Mr. De speaks of

in examination-in-chief was really this interview of 1923 and his memory played him a trick.

After this interview of 1923 Chandra Sekhar Babu took legal advice, and there was some discussion with a view to chose between a suit and a memorial, and this last was eventually decided upon. On 8-12-26, was presented a memorial to the Board of Revenue asking for an enquiry into the plff's identity.

In the meantime the plff. had gone to Calcutta. He left Dacca in Asar or Sraban 1331. The year has been given by several witnesses, but the month appears in the deposition of the 1st. Rani, Sarajubala Debi. That the plff. went to Calcutta in 1924 has not been disputed, and that he went on a day in July or August is the only evidence on record, and does not conflict with any fact. The defdt. called witnesses who saw him in Calcutta in 1924 or 1925, the 1st defdt. the 2nd Rani saw him in Calcutta in the winter in 1924 as she indicates, and Mr. Gupta, District Engineer of the Calcutta Municipality, saw him there in about August 1924.

In Calcutta the plff. lived in a house, called Bose Park in Hurris Mukherjee's road, and with him lived Jyotirmoyee Debi and her son, Budhu. He went to Calcutta accompanied by these, Jobboo, another nephew of the Kumars, Digendra Ghosh (P.W. 212) and three others of whom Durganath Chakravorty was one. Monmohan Roy (P.W. 1037) from whose evidence I take this account was also there in the house. Durganath and Monmohan are the officers of the plff.

The plff. lived in this house for nearly five years. On the very day he reached Calcutta, he called upon the 1st Rani, Sarajubala Debi, at her house, 8, Madhu Gupta Lane. He says that this lady and he met, and she

recognised him then and there. The lady has deposed to that effect. This was on a day in Asar or Sraban as she says.

Except for a brief visit to Dacca in January 1928, and another visit to Dacca in April 1929, the plff. lived in Calcutta until Aswin 1336 (October 1929). Since that date, the plff. has been living at Dacca with Jyotirmoyee Debi's family. Jyotirmoyee and Bhudu lived with him in Calcutta at Bose Park until April 1929 i.e. for nearly four years. In April 1929 Jyotirmoyee Debi came to Dacca on the occasion of a marriage, and did not return. The plff. went back, and returned in October, and has lived at Dacca since, as a member of Jyotirmoyee Debi's family.

During his stay in Calcutta the plff. went about seeing people, attending big functions, became a member of Landlords' Association, and a director of East Bengal Flotilla Service Ltd., a concern managed by Mr. Haladhar Roy (P.W. 248), a millionaire of Calcutta. During this period he met Rai Bahadur Dwarka Nath Chakraborty, Vakil, who was then a judge in the High Court. He met Mr. Govinda Roy long, but not till then a Vakil of the Estate (examined on commission). He met Mr. K. C. De, I.C.S., then Hon'ble member Board of Revenue, and was introduced to him by the Rajah of Hetampur. He met Mr. J. N. Gupta, I.C.S. Acting member of the Board of Revenue with an introduction from Rai Bahadur Chakraborty, aforesaid. He met other people including Mr. Nag, a barrister (P.W. 459) Mr. Gupta, the Engineer (P.W. 461), Mr. O. C. Ganguli, an attorney (D.W. —). He attended, being invited, functions like garden parties given to Lord Cave, Rajah Janaki Nath Roy, and the Viceroy. All this, collected from the evidence of the witnesses just named, and the plff. and of Mr. Bose, (P.W. 212). Mr. De (D. W. 52) saw him at two of such functions does

not prove that he is the Kumar, but proves that he was not hiding.

His petition to the Board for an enquiry, and for withdrawing the Imposter notice, presented on the 8-12-26 was dismissed by the Board on 8-4-27 on the ground that the inquiry will not benefit any body, even if the Board had the power to compel the attendance of the witnesses, or to administer to them oath, which it had not, and will lead no useful result. If the plff. as the result of such enquiry, was found to be an imposter, it would be waste of time; and if it turned out that he was the Kumar, the Board could not restore the property to him.

The plff. returned to Dacca in October, 1929. In the meantime a son of Brojo Babu, i.e. of the youngest sister of the Kumars, instituted a suit at Dacca for avoiding the adoption of the 3rd defdt. by the 3rd Rani. That could have been only on the footing that the Kumars were all dead, or a daughter's son would not be a reversioner. It is not known how far Tarinmoyee Debi was party to this affair, but all the evidence touching her conduct goes before this suit and neither party has called her or her husband. This suit was dismissed.

After returning to Dacca, the plff. made an attempt to realise the rents payable in respect of a third share in the estate. The case of the defdts. is that he did not realise a pice, but they admit efforts to realise them. The plff. has produced collection papers to show that he collected the rents, many tenants deposed saying that they had paid him rents, orders and steps by the estate to prevent collection of rent at this period have been proved (Ex. 217, 214, 276, 360 etc.) telegrams, and letters, were sent to the 1st Rani, and to Govt. complaining of oppression of tenants by the estate Mr. Bignold, the manager wrote

to Bara Rani (2nd Defdt.) that it was a fact that many tenants were refusing to pay asking her not to encourage the tenants to call the Sadhu "Our dear Ramendra Narayan Roy" (Ex. 363), orders under section 144 Cr. P.C. were passed forbidding the plff. to go to Jaidebpur (Ex. 270) and to realise rents (Ex. 360) of which two orders, the former was withdrawn, upon the plff. stating that he had no intention of going to Jaidebpur, certificates were taken out against tenants, and suits by them, to have them cancelled, followed, the 1st Rani began writing that her share of the rent if tendered should not be refused on the ground that the 2nd Rani's share was not being paid, but the plff. held a Punyaha at his Dacca house in Kali Prosanna Ghosh's street for three successive years, as evidenced by the witnesses and the photos (X, XII, XIV). On the 6th February 1930 the following question was put in the Bengal Legislative Council :

"Is the Hon'ble member in charge of the Revenue Department aware that a large section of the Bhowal tenantry in the districts of Dacca and Mymensingh have been paying rent to one who has set himself up as the second Kumar of Bhowal and who declares himself to be the rightful claimant of the Bhawal Raj Estate to the extent of one third share of the entire property ?

The Hon'ble Sir Probhas Chandra Mitra replied :

Yes (Ex. 263).

The suit was instituted on 24-4-30.

I should now mention the principal dates in this what might be called the narrative portion of the judgment which I have considered necessary for a proper appreciation of the direct evidence going to identify.

Some day in December :

1920—Plff. appears in the Buckland Bund.

About 5th April 1921—Plff. goes to Kasimpur.

(On the 12th April 1921—Plff. arrives at Jaidehpur and stays at Madhabbari.

13th April 1921—Plff. at Jyotirmoyee's.

14th April 1921—Do and plff. leaves Jaidehpur.

About 24th April—Plff. at Saibalini's.

30th April—Plff. arrives at Jaidehpur and stays at Jyotirmoyee's house.

4th May—Plff. declares his identity as the 2nd Kumar.

6-5-21 to 7-5-21—Satya Babu sees Mr. Lethbridge and makes over to him the affidavits of death, and asks him to call for the originals from the Insurance office.

9-5-21—Satya Babu's letter in "The Englishman".

10-5-21—The Board of revenue called for Insurance Papers; Mr. Lindsay's report sent by G.P.

Before 15th May, 1921—Satya Babu and G.P. and a barrister go to Darjeeling and collection of evidence of death begins.

15th May, 1921—The meeting at Jaidehpur.

16th May, 1921—Moharajah of Burdwan writes to Satyabhama.

Between 16th and .

21st May, 1921—The two sisters and Govinda Babu apply to the collector for an enquiry.

29th May, 1921—Plff. interviews Mr. Lindsay.

31st May, 1921—Sub-Inspector Montajuddin goes out to enquire to trace the antecedent of the plff.

3rd June, 1921—Plff. declared an imposter by Mr. Lindsay.

7th June, 1921—Plff. goes to Dacca.

14th July, 1922—Satyabhama Debi comes to Dacca.

24th July, 1922—Her letter to the 2nd Rani tenders and refused.

26-8-21—Dharma Das Naga arrives at Dacca.

15-12-22—Satyabhama dies.

25-12-22—Her sradh.

9-8-23—Interview with Mr. K. C. De.

July-August, 1924—Plff. goes to Calcutta and meets the 1st Rani.

8-12-26—Memorial presented.

8-4-27—Memorial rejected.

October 1929—Plff. returns to Dacca.

1929—Plff. collects rent.

24-4-30—Suit instituted.

Direct evidence of identity.

The hearing began on the 27th November, 1933. The plff. the 10th witness, stepped into the box on the 11th December. He was examined in chief for a little over three days. On the 15th began his cross examination, and it continued on the 16th, 18th, 19th, 20th. On the 20th it ended before the close of the day, and then after some re-examination, there was some further cross examination, as a new identifying mark had come in. In short, the cross examination lasted a little over four days. After finishing his cross examination, the learned counsel for the defdts. made a statement, somewhat extraordinary, that he must not be understood as admitting any statement on points as to which he did not specifically cross examine."

The cross examination goes, naturally, to the mind, not to the body. It was intended to show that (A) the plff. is not a Bengallee (B) that he knows nothing of football, tennis, cricket, polo, billiards; nothing of guns or shiker; nothing of horses; nothing of English clothes, nothing of English meals, nothing of English articles of furniture; nothing of photography; nothing of a horse-race. It was intended also to show that he was not

educated at all, but elicited, to the amazement of the learned Counsel as he subsequently declared, absolute illiteracy, except an ability to sign his name in English and Bengali, without even the knowledge of the letters that compose the English signatures he wrote at court, with the exception of the letter 'N'. It will have to be seen how far the plff's ignorance on subjects like the shikar, and horses, and furniture, was ignorance of the things, or of the English terms put, whether, for instance, he could have been a good shikari, without knowing a "bull's eye", or could have had a "side board" without knowing the word, or worn a coat without knowing "broad cloth," or ridden a horse without knowing a "snaffle", in short, whether as regards some of these things, not all, he was not talking prose without knowing it. It will appear below how this part of the cross examination was reduced to a burlesque by a certain discovery that was made after Phani Babu had been put into the box, but it is enough to say that the plff. knows nothing of cricket and billiards, and football, tennis, hardly anything of polo, nothing of the terminology of these games, and other things I am going to mention when I analyse the cross-examination under the topic 'Identity of the Mind'. The Kumar put in the cross-examination is the Kumar put to Mr. Ghosal in 1933: "a well-educated, well-polished young Bengali aristocrat"; a "thorough going sports-man" (put to Mr. Lahiri, P.W. 945) elegant as a "Raja's son" (put to various witnesses eg.p. 660, 402, 433, 461, 112, 514) accustomed to English clothes, English meals, speaking English, and living in English style. I am not sure that even during this cross-examination a little toning down on the point of education had not, looking to the plight of the plff. begun, but later, the defdts. began making a desperate effort to prove a bare literacy, and a

bare ability to speak English. It was impossible to tone it down further except at the cost of the cross examination until their own witness R. C. Sen (D.W. 433) landed them, without his knowing it, in complete ignorance of English which had become manifest long before. The cross-examination did not go, except almost nominally, to the memory of the Kumar, as distinguished from his supposed general knowledge, such as would be possessed by any person with ordinary education, and the learned Counsel, explained that the plff. had ample time to be thoroughly primed, which is a fact, and that he, the learned Counsel, was not going to fall into a trap. It might be said therefore that, practically speaking, the plff. was asked nothing going to the Kumar's memory, except a few questions which he answered, as will appear below correctly, all but one, and most of these questions, except those necessary to put to him the letters which the 2nd Kumar is said to have written to his wife, merely touched what might have been the Kumar's memory, and it looked like nibbling at it, and running away directly the answer exposed the trap.

Full justification for the remarks will appear when I go into the cross examination, but supposing it goes for nothing and supposing the 2nd. Kumar was as ignorant as this man, he the plff. is not he, unless his body is the same, and the question of identity is primarily a question of the identity of the body. One identifies a dead man, or a mad man, but where a question as to identity has arisen, and there is conflicting evidence on the point, one would look to the mind, as individual as the body, and impossible to confound with another, is sufficiently searched. Where, as in this case, the mind is deliberately left unexplored on the theory that tutoring has put into the plff. the entire store of the Kumar's memory, and no

'skill could show it factitious, the body became the principal consideration, unless of course the kumar was educated, or educated even to an extent that could not conceivably lapse to the plff's plight, or unless the kumar had such knowledge as the defdts. impute, I shall therefore go into the cross examination, and into such admission as he is said to have made to witnesses before the trial, but I must begin with the body.

I saw the plff. at court during his examination and also on subsequent occasions when he was present during the trial. I had to go very near him sometimes, and to touch him to see the marks on his body. He looks, as he appears in the photo, marked LX, taken on 28-4-34 by Mr. Winterton (P.W. 788) a well-known photographer of Calcutta. He is in fact, a stout man and looks the age he gave. His hair except where turned grey is dark brown, dark with glint of red, and wavy. His moustache is light brown. His height, measured at Court in my presence by a doctor, is 5ft and 6 inches, without shoes. His hands strike one as small, and the size of his shoes was proved to be six. His complexion is very fair, and pinkish, but as to that I am not indicating now its exact shade, or kind. His nose is broad. He wears a moustache. So far it is possible to say without dispute.

I say without dispute as although at one stage Mr. Chaudhury was suggesting that the plff's hair was black, but browned by neglect, and lack of oil (P.W. 10 the plff. P.W. 155, 377, 660, 938 and others) and trying to elicit this effect of neglect on black hair, and the plff. began to call witnesses to show that it did not in their case have that effect (P.W. 961, 1010) he put, definitely, "Dark brown" to Jyotirmoyee Debi; and still later, his witnesses began to say that the plff. resemble the 2nd

Kumar in nothing except the colour of his hair which was pingla, the local word for brown used by the witnesses on both sides.

Still confining myself to my own observation, I found the hair of the plff. wavy. I saw it in the presence of the lawyers on both sides, and made a record of my observation. His curling hair has come out best in the photo XI, IX. Kamini Babu, D.W. 64 describes his hair, when it was 'jata', as a number of curling strands".

I do not propose to go into fine precisions now, but must go into the direct evidence at once, and then try to scrutinise the points of agreement, or difference, with the help of the photographs, and the experts who have deposed. On one side, there are certain photographs of the 2nd Kumar, and on the other side, there are some photographs of the plff. and the plff. in life. The court will have to rely upon oral evidence alone, going to such details as do not appear in a photo, such, for example, as the complexion, or the colour of the hair or of the eyes. A single point of difference such as blue eyes might displace the plff. the cause of the defdts. being that the Kumar's eyes were blue. That is a point which can not be decided on photographs. If it were possible to say, looking at the photographs and the plff. in life that they are different, I would examine the direct evidence at all, but discard it on that ground. Now in this case Mr. J. P. Ganguli a portrait painter of great repute and a gentleman of unimpeachable credit, looking to his position in life, has given it, as his opinion, that the individual in a photograph of the plff. and the individual of the photograph of the 2nd Kumar are the same person. Mr. Percy Brown, lately a member of the Indian Educational Service, a former Principal of the Govt. Art School where Mr. J. P. Ganguli was the Vice-Principal, and later, acting Princi-

pal, is also a painter and sculptor, and is equally unimpeachable. His opinion after comparing the same two photographs is that the individuals there are different. In fact, he says he sees no resemblance between the two. Mr. Winterton on one side, and Mr. Mussilwhite, both trained photographers, have given opinion directly in conflict. Mr. Choudhury for the defdts. made a great point of fact which Mr. Winterton admits, and nobody who did not know the Kumar denies, that the two photos, compared by these experts (Photos marked x(49) and x(48)—LXVI and LXV) do not at first sight appear to be the photos of the same individual. Scrutinised they do so appear, according to Mr. Winterton, and Mr. Ganguli alike—the same individual in different periods of life. Mr. Choudhury contends that you ought to be able to see at a glance the same individual in several photos taken at different periods of life. If you did not know the man, you could not see that at a glance, if the man was growing and changing, unless he is of the type that changes little with age, if the photos are separated by long intervals. One would often fail to recognise one's friend in a photo taken in his youth before one had come to know him. A person, however, who has known him all his life would recognise him in all his photos, from a tiny child to an old man. Take, for an instance, the eight photographs of the 2nd Kumar that have been produced. In Ex. 1 he is a small boy. In Ex. XL he is a boy of 14 as Mukhuti (P.W. 63) who is with him on the photo says and he looks. Ex. a (15) is one of the latest photos and Ex. 11 still later, taken as plff. says before he went to Darjeeling. Now no two of these photos appear to a stranger to be the photo of the same person. Those who knew the Kumar had no difficulty in recognising him in all. The Rani, (defdt. 1) could not recognise her husband in XL. She had not

seen him at the age of 14. Birendra (D.W. 290), a later acquaintance could not know him there, and says that, unless told, he would not dream of taking him as the 2nd Kumar. If you take the inset photo of the 2nd Kumar (Ex. 11) and the frock-coat photo of the 2nd Kumar (Ex. a 15), and any photo of the plff. without his beard you would think, if you did not know the Kumar, that they were all photos of different men, and if you are told that in two of them the individual is the same, I believe you will pick up the Frock-coat photo and the plff's photo as these two, whatever opinion you may form after a scrutiny. I have dealt with the point so long it seems to me to be rather obvious—in deference to the contention of Mr. Choudhury and in view of the reluctance of even Mr. Percy Brown and Mr. Mustle White to admit this simple fact, though they admitted it in effect, and also because it is necessary to say that you can not look at the photos and decide this case.

The fact I have just stated—that those who knew the Kumar will recognise him in a series of photos taken at different periods of life during their acquaintance, but strangers would not bring out the truth that the best proof of identity is recognition, and the next best thing is inference of identity from evidence, without recognition, as when you identify a drowned man by a letter in his pocket, or a thief by his finger-print. Those who knew the Kumar see in the photos of the Kumar the same man, because running through them all there are points that have for them, and not for a stranger, a sense of familiarity that attaches, without inference, to every experience that recurs, if the image, left by its predecessors has not faded; and if you see a man, not once but often, you retain a generalised image, and recognise despite

change produced by age, or diseases, or accident. Mr. Choudhury's efforts therefore to shake recognition by showing that the witnesses who speak to it cannot analyse, or describe, were futile. Babies can recognise. You can recognise a voice without being able to describe it. Features, individually not very different, from those in another, produce collectively an effect which makes it unique. It could be seen or put into a picture, but can not be described. Nobody can paint a portrait from a description. Few can identify a feature, unless it is very peculiar, as one does not see the feature, one by one and then join them up for the face. One sees the face. Mr. Choudhury for instance was asking: "Can you tell the difference between Rup Babu and the Rajah? (P. 538) What is the difference between Digendra Babu and the zemindar of Pubail? (P. 608) Can you describe your land lord? (P. 752) Can you tell the difference between the Rajah and Bara Kumar? (P. 514). Can you tell the difference between the Billoo and Tabboo? (P.W. 137). Can you describe the difference between the 2nd Kumar's and Budhu's nose? (P. 360). Can you describe Behari Saha of your village? (P. 179). Can you distinguish Narendra Chaudhury and his father? (P. 399). Can you describe Mrs. Meyer's sister-in-law? (P. 838, Kumar's nephew)". This sort of thing, and the invisibility of an aristocrat were all he was trying to make, in view of the utter dissimilarity theory, though one witness admitted in answer to me that he could not tell the difference between his two sons, except that one is plump and dark, and the other fair (P. 498); and though one peasant, asked, "What did you see before you recognised him? Answered; The face (P. 425). What did you see of his face before you recognised? he asked another witness (P. 425).

A long hair and beard.

Q.—You recognised him by his long hair and beard?

A.—Yes, (pause) and by seeing his face.

As to the these tenant witnesses who say they knew the Kumar, and most of them, by sight only, I do not propose to discuss them in detail. The plff. has examined 473 such tenants including a few cultivators under other landlords, and I have put into this figure some who hold a little taluq, but are really cultivators. The defdts. have examined 219 such tenants. Both sets saw the plff. in, or about 1921, upon his arrival, and most at Jaidebpur, during the 30 days of his stay at the house of Jyotirmoyee Devi.

Those examined for the plff. say that they saw the plff. and recognised him as the second kumar, not at a glance, but after looking at him for a little time. Those examined, for the defdts. say, that they found the plff. utterly different, and not the 2nd Kumar at all. A large number of the plff's witnesses add that they paid the plff. rent or nazar.

In estimating the evidence of these two sets, two letters must be taken into account. On the 31st May, 1933, nearly six months before the trial began, Rai Saheb Jogendra Banerjee wrote a letter to a Naib in Bengali, a portion of which I translate as follows :

“Take the statements of the witnesses selected by you for the estate, and send them to me. I am sending a specimen herewith of the statement, but see that the language of each is not the same. Get also the witnesses cited by the other party write a statement in those terms.”

And the specimen enclosed is : Ex. 309(1).

“Age...I pay—as rent to the Raj Sircar. I did a lot of darbar at the Rajbari in the late 2nd Kumar's time.

I knew all the three kumars, and they knew me too. The late 2nd Kumar used to do bichar etc. I went to him many a time, and knew him very well indeed. This Sanyasi talks Hindi. The late 2nd Kumar used to talk to us in Bengali. The Sanyasi's speech, and appearance, do not resemble the 2nd Kumar's at all. Between the death of the 2nd Kumar and the arrival of the Sanyasi I did not hear a rumour that he had not been cremated or that he had not died. I do not believe at all that the Sanyasi is the 2nd Kumar."

Rai Saheb was the chief Tadbirkar for the defdts. for this suit, and admits having written this letter (Ex. 309).

The other letter Ex. 353(1) by an Inspector of the Estate is a circular, lithographed, with the name of the Naib filled in, which directs: "Take steps according to previous instructions to see that no tenant of the estate or any other witness deposes for him (plff.). List of witnesses cited by the other party already sent to you." From the area of this particular Naib a witness came to depose and he was told in letter marked Ex. 353 that, that made it perfectly clear that he was supporting the Sanyasi, and that he should show cause why he should not be dismissed. "If you could not hold him in check you should have informed Rai Saheb and take the witness to him."

These letters are dated 20-11-33 and 20-12-33 respectively. The trial began on the 27-11-33.

It seems therefore that the defdts'. tenant witnesses are the product of these letters, looking also to the fact which, such of them as were asked admitted that they had been sent in batches in the custody of a peon by naibs. The tenants who have deposed for the plff. have come inspite of these orders, have braved certificates, and what are called "K. P. Suits" (i.e. khas possession or ejectment suits) which occur in many a document as a weapon

to be used against the supporters of the Sadhu (Ex. 343, 211, 340, 214, 259), and proved their belief by paying the plff. money. Generally speaking, these tenants, are substantial cultivators, and not tenants of the poorest description called by the other side. This I say, generally speaking, they are not discredited by the fact that they cannot analyse, or describe. I have disposed of that argument, and the attempt during their cross examination to show that they did not see the Kumar at all has gone for nothing, seeing you call another set who had not more opportunities than they, and who admit, or do not deny, that the 2nd Kumar was very visible indeed. He was an outdoor man, going everywhere, and seen everywhere. He would go to stables in the morning. He would go to the Pilkhana. He would go about on elephants, drive about, ride about, will be seen at the Rath, at the Gan in the Rajbari, in the Maidan in front of the Rajbari, at the hat, at the Railway station, out in the jungle for a shoot. Most of this defdts. witnesses have admitted, and the rest not denied. The defdts. could not make him invisible by putting a sentry at the gate (P. 499) or suggesting fixed hours for admission into the Chiriakhana, or putting him into a room at the time of the Gan on the Natmandir, as though sitting in the Natmandir, in the middle of tenantry, or other visitors, was disreputable. It was nothing of the kind. It was rather a graceful condescension. Tenants certainly kept their distance, and if they do not remember the managers, (e.g. P. 127) or the precise effect that the Earthquake produced on the Palace (e.g. P. 333). It did not collapse—or the precise date when the pilkhana was shifted to the spot where it came to be, or could not fix dates with reference to their age, or did not do any business with the 2nd Kumar, they certainly saw their malik, an arresting personality, as one

witness says (P.W. 651) even to strangers. A great many of these tenants, looking to the map, come from villages within 3 miles from Jaidebpur, their Railway Station, their market and their maliks' home, and looking to the tenants which the defdts. themselves called it is a surprise to me that the attempt to keep the Kumar from the sight of his tenantry should have been made.

I have no doubt that these tenants, most of them, had seen the Kumars, and the 2nd Kumar most of all. I have little doubt, that they believed that the plff. is the Kumar, but in the circumstances of this case, it would be impossible to rest one's conclusion upon their testimony, unless the identity otherwise appears, so long as it is explicable by a sense of loyalty to the old house, and by a measure of resemblance enough to deceive. But I say at once that the denial by the defdts'. bath of such witnesses coming to repeat Rai Saheb's "Sample evidence", without the variation which he had recommended, goes for nothing, except for things extracted from them in cross examination. They generally speaking say, for instance, that the plff. is different, that is, his face utterly different—the utter difference at their stage was limited to the face that you see the difference at a glance, but one witness, (D.W. 336) to mention one instance pointing to the degree of resemblance, was asked :

Q.—You saw at a glance he was not the 2nd Kumar ?

A.—One could not see that at a glance. Hence I had a long and good look at him.

And then he goes on saying that he had made a statement, that he had told the pleader that there was no resemblance and that a glance was enough to say that. Then the witness changes that, and says that he had told the pleader that a glance was enough to say that, that

he had decided he was not the 2nd Kumar after taking a good look at him not at first sight.

Q.—“How does he strike you at first sight?”

A.—“The same man”.

The witness had indicated the problem before the court. Is this the same man whatever the degree of resemblance?

It might sound incredible, but nothing was insisted on with greater vehemence than this utter difference or total dissimilarity case. It is in Rai Saheb's "Sample evidence". It is in the mouth of every witness examined by the defdts. on commission, except Mr. R. N. Sett before the trial began. At the trial, it was put to P.W. 2, to P.W. 9 and, from time to time, until P.W. 660 Jyotirmoyee to whom also the suggestion was that there was no similarity. "I tell you that between the plff. and the 2nd Kumar there is no resemblance whatever"—that was the form of the question put to Jitendra P.W. 6. Leaving aside the plff. the fact, now admitted, that between the 2nd Kumar and the youngest Kumar and Budhu, (son of Jyotirmoyee Debi) there was general resemblance was questioned, with the result that some hundreds of witnesses were asked about it. On 8-1-34 the plff. filed a petition inquiring in defdt's. case was still total dissimilarity, and the answer was that the case is in the W.S. Nothing on this point is there. When the plff. closed, and after 967 witnesses had sworn to the identity, Mr. Choudhury in his opening mentioned his case as to certain features, but as to any general resemblance, such as could produce deception, he said nothing until I inquired, and his answer was: "They are not so utterly different that anybody who says that they are the same necessarily gave false evidence". I took down his very words. Such mistake, he later explained, could occur if a man had seen him only casually

—the 2nd Rani would not even go so far—but after his opening, evidence was led limiting the difference—still total dissimilarity to the face, and conceding a similar colour of the hair, though this was being disputed as any other feature until the 660th witness for the plff.

I do not agree that the court has to decide between two alternatives, total dissimilarity and identity, and in examining the direct evidence I cannot suppose that the witnesses are either lying, or the plff. is the same man, though the defdts. might be committed to this sort of thing. Everything in the evidence, the undisputed facts connected with the declaration of identity, summed up in Mr. Needham's report, the facts I mentioned in that connection as shewing the honest belief of the sister, the facts that followed, the mukhagni and sradh of the grandmother, the decent people who joined them, the payment of nazar and rent, the opinion expressed by conduct of people of the highest position who knew the Kumar, the 967 witnesses who have sworn to his identity, the evidence of Mr. J. N. Gupta that there is a general resemblance between the two, the evidence of Mr. Rankin that if any body says that the plff. resembles the 2nd Kumar he might be speaking the truth, the evidence of Mr. K. C. De (D.W. 52) that he who denied the identity might be mistaken, the manner in which the 2nd Rani's own cousin (Sukumari D280) denies the identity in cross examination—I shall come to that below all this, and many other things, in the evidence, and certain incontrovertible situations that arose show that the old peasant whom I mentioned (D.W. 336) indicated the problem for me "At first sight he seems to be the same man." The Court will have to decide whether it is identity or stops short of it; whether the witnesses belonging to all ranks and conditions of life, and of whom there would be no end except for the limit

imposed with consent, have been misled by a resemblance, or whether they came because he is the same man. Fortunately the court will not have to decide between this mass of evidence and what evidence the other side have produced by the credibility of the witnesses alone. There are the marks on the plff's body and there are the photos.

This indicating the limit of the controversy, I proceed to examine the direct evidence on either side, but I propose to do it briefly. The plff. has examined 1069 witnesses in all, including 27 examined on commission. Of these, 92 are non-identifying, such as the experts and all, except two, of the Darjeeling witnesses, and 10 have proved nothing. It may be said therefore that 967 witnesses have deposed that the plff. is the same man. Of these 967 people, 473 are ordinary tenants already referred to. The rest fall into the following classes :

Relations	...	...	18
Old officers	...	...	66
Menial servants	...	...	33
Personal servants	...	...	10
Railway servants posted at Jaidebpur			
or elsewhere	...	...	19
Trades people, drummers musicians			
and the like	...	...	41
Ordinary bhadrals such as teachers,			
students priests old students at			
Jaidebpur	...	...	33
Substantial talukders	...	...	21
Intimate friends	...	...	2
Rich or substantial men of high positions,			
or professional men, such as			
Barristers, pleaders Advocates,			
doctors	...	...	58

These total 301.. The Remainder had no transactions with the family, mostly Dacca people who say they knew the Kumar but include 20 co-villagers.

It is impossible to deal with the witnesses, each of them. I propose to deal with some only, and these I put into two classes : (1) Those who certainly knew the Kumar and could not possibly mistake him, whatever, their credit (2) Those whose credit can not be seriously questioned and knew the Kumar, and the only question is how far they remember him.

Under each head I discuss the least questionable only.

1. Plff's witnesses who certainly knew the Kumar.

(1) P.W. 660 Jyotirmoyee Debi, the sister of the Kumar.

I have given full reasons for holding, as I do, that she believed on the Atma-parichaya day, the 4th May, 1921, if not before, that the plff. was her brother. She was honest, in that belief—that is what Rai Sahab thought on that day and that thought, as I pointed out, passed into the report of Mr. Needham which was practically his own. He knew the Kumar as well as anybody, and had seen the Sadhu, and thought that the sister, and her family and her sister's family honestly believed that the Sadhu was the brother. I would not repeat the full considerations on this point that occur on page 122-126 of this judgment.

As against this lady, the things stated in the pleadings are that she, and her sister, and their families used to live comfortably at the Rajbari till their brothers died, that they were turned out of the Rajbari, that the adoption dashed their hopes. It is true that they lived as members of their brothers' family, and it might well be supposed that the adoption dashed the hopes of succession of their

sons, but the allegation that they were turned out is a deliberate untruth. Before the Chhoto Kumar's death, the elder sister's separate house was completed, Jyotirmoyee Debi's house was under construction, and from the day the Chhoto Kumar died they, the sisters, never stepped into the Rajbari, or into the Nalgola house at Dacca. This account which I gave above has not been disputed by any body not even by Rai Sahab. All that Mr. Choudhury ventured to suggest to the lady is that she was asked to leave the Nalgola house. No body came to see so. On the other hand evidence was led by defdts. that the sisters left this house with indecent haste, though the 3rd Rani wanted them to stay.

That the sisters were contemplating separation from the brothers even before Chhoto Kumar's death is plain. No body denies that the houses they live in had not been complete before the Chhoto Kumar's death, or had not begun. The fact however remains that a brother would suit them very well, and but for the adoption in 1919 their sons would succeed, though this lady has now no son left. Her only son, Budhu, died before the trial began. A brother might suit her, but she is not poor, unless you compare her with the Raj. She had an income of Rs. 200 per month, and additions thereto occurred by reason of certain legacies, and the litigation that these led to occurred after the year 1921. In 1921 her son was keeping a carriage, and though her income was not affluent, she was above want. A brother might suit her, but one does not adopt a brother on that account, and if she was insane, and thought that a Punjabi could pass as the Kumar despite the widow, despite the resources of the Bhawal estate, despite the uncertainty and remoteness of the success, despite Satyabhama Debi, despite her own notions of caste and honour, despite of her own financial ruin,

and exile from home, the whole Pargana, and outsiders, and decent people, would not go mad and support this nefarious scheme which she suddenly conceived, and sought to carry out by placing the Sanyasi in the open, and sending him to the Collector, and demanding an enquiry at a moment when a single question would expose the fraud. The thing is inconceivable. This lady has hold what she believes to be truth, and it remains to be seen whether it is the truth. One thing urged against her is that although she says that there was a rumour that the 2nd Kumar was not dead, she had deposed in court before the arrival of the plff. that her brothers were dead. That is no real inconsistency, if you take the belief in the rumour as a kind of hope—it was nothing else, and when confronted with this she said that at court one has to say what the law requires, all that she meant was that at court you cannot mention your hope as a fact.

2. Sarajubala Debi, the 1st Rani.

This lady was examined on commission, and she was sworn that the plff. was the 2nd Kumar, her brother-in-law.

This lady, whose husband, the 1st Kumar, died in 1910 left Jaidebpur soon after and settled down in Calcutta and never returned. Until a date after 26-2-25 she had been living at 8, Madhu Gupta's lane, Calcutta, and then removed to 112, Ripon Street. No. 8 Madhu Gupta's lane is the house from which she wrote numerous letters to the manager of the Court of Wards and Board of Revenue. No. 8, Madhu Gupta's lane was her father's home, and her brother, Sailen Matilal also lived there. It will be recollected that Ashu doctor addressed a letter to her brother at this house on 4-5-21 (Ex. 398).

This lady's father was a vakil, as I said before, and he was for a time the Manager of the Bhawal estate between Rai Bahadur K. P. Ghosh and Mr. Meyer. The Matilal's according to evidence are respectable family in Calcutta.

This lady, the Bara Rani, has lived since 1910 in Calcutta, and has become, practically speaking, a stranger to Bhowal. She receives, like the 2nd Rani, the income, and the present dispute does not affect her interest, and would not affect her at all, if she did not support the plff. and thus bring upon herself the displeasure or disapproval of officials who have anything to do with the management of the estate, and consider the Sadhu an imposter.

This lady in her evidence says in cross examination that her brother had come to Dacca, and told her that he had seen the plff. and that he was the Kumar himself, and that she had heard this sort of thing from other people as well. "I only heard it and that was all", says she, meaning that she was not practically interested. Then, one day, in Asar or Sraban 1924—she indicates the year—she was at her prayers at dusk when she heard that the "Sanyasi Kumar" had called, and some neighbours had come to see him. She sent for him, had him brought upstairs, saw him, and recognised, and accepted him, as the 2nd Kumar. Since that day he called some two or three times a month during his stay in Calcutta which, it will be remembered, was from July-August, 1924 to Oct. 1929. The plff. had said that he called, and met this lady at 8, Madhu Gupta lane on the day he reached Calcutta. The lady says that since the day she recognised him, she had asked him to dinners, and he would come, and chat with her, as husband's younger brother does, until he left Calcutta.

This lady was cross examined by Sir N. N. Sircar,

then Advocate General, and I have read her evidence with care. One fact that transpires in cross examination is that this lady has written numerous letters to the Manager and Board of Revenue objecting to items of expenditure which she thought were going to benefit the 3rd Rani who happens to live at Dacca: the other two ladies being away and therefore enjoys benefit of repairs and other things, such as a car, made or kept as joint concerns at joint cost. Another fact is that she always questioned the adoption as invalid, has never accepted the adopted son, and always refers to him as "the alleged" adopted son. "I have never accepted the adoption made by Sj. Ananda Kumari Debi", she says in one of her letters (S.B.D. 52). It is perfectly clear that she jealously watched every disbursement by the joint estate, questioned every item which she thought was going to benefit the 3rd lady, and in this, until the appearance of the plff. the 2nd lady also an absentee, joined as she admits in her own deposition in the suit by Brojo Babu to avoid the adoption. In a word, the two ladies were, in their relation to the 3rd on precisely the same footing, and both disliked the adoption, though the 2nd Rani, in her said deposition, tones it down to mild displeasure, as she was not properly informed of the ceremony. The 1st lady's objection to the adoption was that the mother of the boy adopted belonged to the same gotra, but the defence suggests a motive other than religious, and that is that the 3rd Rani had refused to adopt her brother's son. Now the 1st and the 2nd ladies were, as I said on the same footing in their relation to the 3rd until the appearance of the plff. and then the common peril began to draw the 2nd and the 3rd Rani together, and in this matter of the Sadhu, the Bara Rani, Sarajubala Debi, was certainly not against the 2nd Rani until 1924 when she says she saw,

and recognised him as the Kumar. In May 1921, a few days after the declaration of identity, the 2nd and the 3rd Rani were frantically telegraphing to the Board of Revenue to retain Mohini Babu, the Asst. Manager, as there was a proposal to transfer him. (Ex. 238 and 239) and Bara Rani sent to Mr. Lindsay, the Collector, the telegrams connected with the death and illness of the 2nd Kumar at Darjeeling in compliance with his letter dated 27-10-21. It was not suggested in cross examination that in this matter of the Sadhu, the lady had gone against the 2nd Rani until 1924. On the other hand the suggestion is that she did not go over to his side until 1335 (1928), and many letters have been produced to shew that even after 1924, when she says she had recognised the plff. as the 2nd Kumar, she had made proposals, or took objections, or legal opinions, on the footing that the 2nd Kumar was dead.

So little was it known that the 2nd Rani's old attitude towards the adoption had undergone a change that Brojo Babu, the defacto plff. in the adoption suit, called the 2nd Rani as his witness, and this lady began by supporting the adoption. This was on 4-5-29, and in cross examination she proved whatever the other party the Chhoto Rani wanted (Ex. 452). The 1st Rani deposed in this case on 26-7-29 against the adoption, not the fact but the legality of it and it is in this case that the suggestion was made that her father wanted the Chhoto Rani to adopt a grandson of his—a fact which she denied. I notice that Sir N. N. Sircar was content with merely putting this passage—the suggestion and its denial in her cross examination—without putting it direct, and without putting the time and the circumstances of such a request.

The suggestion that this lady, the 1st Rani, went over to the other side directly she found the 2nd Rani

supporting the adoption by her evidence is not arguable. She had declared her belief in writing, and expressed it by word of mouth, long before 1929, and there is conclusive evidence that she had declared for the plff. after she had seen the plff. in July-August, 1924. Satya Babu (D.W. 380) saw this, and consequently said, that it got known before the 2nd Rani actually deposed that she was going to support the adoption, and thus she the Bara Rani thought "of killing two birds" with one stone by declaring for the Sadhu. It would kill the Chhoto Rani who had adopted, and the Mejorani who was going to support the adoption. Satya Babu has obviously no personal knowledge of all this statement as to Bara Rani's motive, and her coming to know what the 2nd Rani's attitude towards the adoption was going to be—but with an eye to the year 1924, when the 1st Rani says she had seen the plff.—he says that she has been on bad terms with the 2nd Rani for the last ten years. This is untrue, and was the only thing left to discredit her directly it appeared that her cross examination, so far as it went to found a motive on the adoption to turn against this Rani, had failed. It was not suggested during the cross examination of the 1st Rani that she was on bad terms with the 2nd. The 2nd Rani does not say that in her previous deposition, nor in this. She does not deny that even a month before her deposition on commission she had called upon her, which looks strange, unless she was looked upon as an unfortunate lady who had no hand in the defence, but the fact is that these two Ranis were not on bad terms, though difference must have arisen directly, in 1924, the 1st Rani declared for the plff. The difference was the effect, and not the cause, and I do not think it possible that the 1st lady, whatever her feelings towards the 3rd lady, or her adoption would, to hit her aim so tremendous a blow

against the 2nd Rani, or wait, till she met the plff. The whole drift of the cross examination was that she had not seen the plff. or recognised him in 1924, and that for some reason she went over to the side of the Sadhu in 1335, and that reason was her dislike of the Chhoto Rani and of her adoption, and to that was added the suggestion that the Chhoto Rani had refused to adopt a grandson of her father. Now look at the letter Mr. Drummond, Collector of Dacca was writing to her on 25-1-25.

Dear Madam,

I am gratified to hear of your kind offer of portraits and pecuniary help to Northbrook Hall.

I am afraid however in the present situation it is impossible to expect his Excellency to unveil the portrait. Were he to do so, it would appear as if he approved of your attitude towards the Sadhu. As you know certain gentlemen of Calcutta have taken up the latter's case, and are endeavouring to bring him before the public eye. It is time the Govt.'s attitude is made clear, and that no shadow of countenance is given to the claim which certain people put forward in the Sadhu's behalf (Though he seems himself quite disinclined to make any claim himself). Hoping you are in the best of health.

I remain,
Yours sincerely,
Sd. J. G. Drummond.

The attempt to displace the meeting of the 1st Rani with the plff. in 1924, and her recognising him, by the case that until 1335 (1928), she had not written an official letter otherwise than on the footing that the 2nd Kumar was dead has failed. She says truthfully that she told officials that she had recognised the plff. and Mr. Drum-

mond knew of her attitude in January 1925 which suggests the inference that she had declared her belief in 1924, although in official letters on points that did not touch this issue at all she could not complicate matters by raising needlessly this issue, which might go against what objections on items of expenditure she was making, so far as it affected her own share, any more than tenants or pleaders who have deposed to the identity have raised this issue in ordinary suits for rents or the like, which continue to be on the footing that the 2nd Kumar is dead, and the defdt. no. 2 his successor.

This lady says that she told officials like Mr. K. C. De, I.C.S., member Board of Revenue, Mr. J. N. Gupta who acted for him, and Mr. Sachse, later, member Board of Revenue that she had recognised the plff. Mr. Gupta was examined on commission for the defdts. He was asked nothing on the point. Mr. K. C. De admits that she did tell her when he met her in Calcutta about 1925 or 1926 that she had recognised the plaintiff. "She told me herself with her own mouth that she had recognised the plff. as the 2nd Kumar", he says. Her attitude was clear in January, 1925 even to Mr. Drummond, and certain earlier letters proved by the defdts. indicate what it had become after July 1924. On 8-8-24 she was objecting to a proposed suit against the Kumar's sisters and nieces to recover Kripamoyee Debi's properties which they had got under her will, and pointing out that the issue as to the Sadhu might be raised in such a suit (Ex. S.B.D. 21). On 15-8-28 she was objecting to the decision that the cost of this suit should come out of the joint estate (S.B.D. 23). On 5-9-24 she was interceding for one Behari Saha who had been served with a notice to quit because he had said he had recognised the Sadhu (S.B.D. 59). On 27-9-24 she was insisting that the Court

of Wards should not take charge of the estate of Phani Babu, as it would be necessary to sue him for recovery of a property, and he could not raise the issue of the sadhu, being against the Sadhu. On 10-9-25 she was writing to the manager that the cost of fighting the Sadhu should not be debited to her (S.B.D. 60 or Z 314). On 25-1-25 had come Mr. Drumond's letter on her attitude. On the 23-6-25 she was referring to the death of the 2nd Kumar as reported (S.B.D. 25). On 15-8-25 she was referring to the 2nd Kumar as the Kumar who had 'disappeared'. On 23-7-28 she was saying that she was not prepared to admit that the 2nd Kumar was dead, and referring to the plff's memorial as containing the names of the persons (including her own) who had recognised him. These letters were all put to her by the defence. It is perfectly clear that in 1924 she had declared her belief that the plff. was the 2nd Kumar, that she had told it to officials, that the adoption suit which was instituted later suggested the motive to be imputed, and the tale that her brother's son was offered for adoption, and directly that broke down Satya Babu came with his vague tale of bad terms for ten years, to put the difference which arose, after she had seen the plff. before that date. I find that the whole thing was a lot of a confused attempt by people casting about for a motive. I find that this Rani did see, and recognise the plff. in July-August 1924, and her belief that he is the 2nd Kumar is as honest as that of the sister's. There was no adequate motive to go against the Court of Wards for the sake of an imposter. This must have been felt, or she would not be asked in cross examination whether there is any agreement as between the plff. and her brother, a thing which it was not thought prudent to ask the plff. and in her W.S. the 3rd defdt. and the 1st (2nd Rani) questioned this allega-

tion of recognition by the 1st Rani in her pleading as false, adding that if she had made an admission that the plff. was the Kumar. "This must have been made from indirect motive, or as the result of entreaties or pressure on behalf of the plff. and his supporters or by mistake". The last word must have been missed by whoever instructed learned Counsel to make a case of total dissimilarity during the trial as excluding every chance of a possible honest belief, seeing that the case was going to be one of a narrow conspiracy of "a few designing person" who have utilised discontented tenantry, or disappointed relations. Neither of these classes existed, but they look well on paper.

(3) Pura Sundari Debi on commission.

She is the 1st cousin of the 2nd Rani, being a daughter of Babu Protap Narayan Mukherji, one of her three maternal uncles, other two uncles being Surya Narayan, zemindar family of Uttarpara, and to this family the 2nd Rani claimed to belong, as the daughter of their sister married to a nobody, when she was opposing the assumption of charge of her share by the Court of Wards (Vide page six). Protap Narayan, the father of the witness, was the uncle who had arranged the 2nd Rani's marriage, and came to Jaidebpur with the bride. His sister, the mother of the deftd. no. 1 at first lived with her children at his house, but latterly lived at the house of her brother, Ram Narayan when the marriage took place.

The witness, Pura Sundari, is the wife of a pleader who lives in Calcutta with her husband. She was about 19 when the 2nd Rani was married, so that she is about the same age as the 2nd Kumar. She herself had been married before, and though married, she was living at her

father's as the defdts. themselves elicited as they wanted to prove that her husband was a 'ghur jamai.'

Now this lady says that one day, some two years before her deposition—that would be about the end of 1931—she was at home when her husband said : "A gentleman has come. Come and see him". "We were living then in Issur Ganguli lane. Going to (looking through) the shutters of a door, I felt queer. Why, the same man, the man known to me, a little stouter perhaps, a little more red than the complexion I had seen in his youth—but that did not matter. I thought he was the Kumar the Kumar Ramendra. Then we met at once, and he bowed to me, calling me didi, and he knew me."

It is not suggested that this lady did not know the Kumar, nor that what she says falls short of recognition though looking to her account the fact that the 2nd Kumar went to Uttarpara some half a dozen times in all, either is arguable, though her account of the meeting has a ring of truth. What is suggested in her cross examination is that she was giving false evidence, as her husband is not rich, and as her husband was once insulted at the house of Protap Narayan Babu on the occasion of the first rice ceremony of his son, Kumar Kristo. She was asked whether it was not a fact that the 2nd Rani's mother had her husband turned out by a durwan on that occasion. The suggestion, in short, was that she was a discarded daughter of the family of Protap Narayan Babu, and could thus be secured to depose against her cousin in a matter of this kind. It appears that her husband has some zemindari, and keeps a naib and the suggestion is disposed of by the fact that the lady of the house—the widow of Protap Narayan herself—the mother of the present proprietors, came and deposed before me at Dacca for the plff. The incident must be pure invention. I find that this lady

saw, and recognised, or at all events thought she had recognised the plff. as the 2nd Kumar.

(4) Sarojini Debi, examined before me.

This lady is the 2nd defdt's aunt, the widow of the late Protap Narayan Roy, brother of her mother. It is this lady who with Protap Narayan Roy came with the bride to Jaidebpur on the occasion of her marriage. She was married to Protap Babu about 1899—her step-daughter, Pura Sundari, had already been married then—found Fulkumari, the mother of the 2nd Rani, living with her children at her husband's house, and these stayed there for two years after her marriage, and then went to live with the second brother, Ram Narayan. Fulkumari Debi was living with her children including Satya Babu at Ram Narayan's house when the 2nd Rani was married.

This lady had admittedly come to Jaidebpur on the occasion of the marriage, had seen the 2nd Kumar, and his home and had seen him during his visits to Uttarpara he would be asked to dinners and the like at her house, and there is no suggestion that she did not see the 2nd Kumar. This lady swears to the identity of the plff. as the 2nd Kumar. His last visit to Uttarpara was some 2 or 2¼ months before he went to Darjeeling.

She says that she had heard of course that the 2nd Kumar had died at Darjeeling, and heard later that he had come back. She and the 2nd Rani used to visit at each other's house and met on ceremonial occasions, but she did not allude to the man who had been calling himself the Kumar lest the topic should be painful to her, though she herself felt a desire to see the man and spoke to her sons, the present proprietors, but was told that the man had been declared an imposter.

During the trial the plff. called at her house at Uttarpara. Her son asked her to come and see who had come, and she looked from behind a screen, looked at him for a minute or so, recognised him, stepped into the room, and they talked, and the plff. was taken to the andar and given jalkhabar (refreshment), as sons-in-law in this country, are invariably given, and the plff. before he left asked her to give evidence: "Mamima you have recognised me. You will have to give evidence. "Call me if necessary." I said "I need tell nothing but the truth".

And this lady came all the way from Uttarpara which she could not do without the approval of her sons who own zemindaris whose rent-roll is Rs. 53,000 per year, and who belong to one of the first families in West Bengal, as the deftd, No. I. herself will insist.

In cross examination the worst that could be suggested against her was that she had litigation with her husband's executor, Tincourie Babu, and in that litigation she was very unreasonable. To reduce apparently the period of her visit at Jaidebpur the 2nd Rani falsely changed her wedding day until documents made her correct it, and after this lady had left, and the deftds began, and time passed, Satya Babu came into the box and said boldly that he is "on bad terms" with her. Even invention could think of no possible cause, but Mr. Chowdhuri during his argument asked me to consider whether the very fact that she came all the way to Dacca to depose is not proof of some enmity with her niece. A woman would do a great deal for her niece, but she would draw a line, if she think that she is denying her husband. That is a matter on which men may but few women would support the wife.

I find that this lady told the truth when she said that she had recognised the plff. as the 2nd Kumar of Bhawal.

The following relations have also sworn to the identity of the plff, as the 2nd. Kumar of Bhawal.

(5) Sonamani, mother's sister to the Kumars: (commission).

(6) Sudhansubala, another sister of the mother (commission)

(7) Kedareshwar Bhattacharjee, mother's brother (P. W- 33).

(8) Radhika Goswami, brother's son to Satyabhama Debi, i. e. a son of the Rajah's maternal uncle (P. W. 4).

(9) Mukunda Mohan Goswami do do (P. W. 35),

(10) Lal Mohan Goswami do do (P. W. 852).

(11) Sures Mukherjee, a stepson of Kripamayee-Debi (P. W. 5).

(12) Basanta Mukherjee, a cousin of (11) (P. W. 71).

(13) Jitendra also called Biloo, nephew of the Kumars being a son of Indumayee (P. W. 938).

(14) Chandra Sekhar P. 959 } the sons-in-law of

(15) Sagor Babu, P. 977 } Jyotirmoyee Debi.

(16) Kulada Sundari, 80, the widow of Prasanna Kumar Mukerjee, a first cousin of the Rajah Rajendra.

(17) Akhil Pakrashi, a zemindar of Sthal, father-in-law of Biloo (P. W. 37).

(18) Kamal Kamini Debi, the sister of the mother of Phani Babu examined on the other side.

I do not notice distant relations like Sibamohini, (commission), Kiranmoyee (P. W. 962), Ashutosh Ganguli, 48 (P. W. 464) but Ananta Kumari (commission), a distant connection stands a different footing. She is more than a relation. Her husband, Shyama Prosad Roy, was a kins-man and employee of,

the Kumars and their father. She was married at the Rajabari itself when the 2nd. Kumar was six months old, and she had known him all her life.

Not a relation has deposed for the other side except Phani Babu, and his sister, Saibalini, and the latter's son-in-law an employee of the estate. What is more amazing, the defendant No. I's own people at Uttarpara would not come and disown this alleged impostor except a cousin, Sukumari Devi, who lives in Calcutta, and whose denial—its mode will appear below. Her mother, the widow of Ramnarayan, who is as good as mother-in-law is living and there must be other members of the Uttarpara family who knew the Kumar. Tarinmoyee has not been called by either side, and the reason why she cannot depose, and why the defendants did not lay any stress on the point has already been indicated. When I deal with opinions expressed by conduct, she will be fully dealt with, but it is enough to say at present that Mr. Lindsay's letters and evidence put her in the same category as Jyotirmoyee Debi (e.g. Ex. 435). She was at the mukhagni, and she was at the sradh. She had joined in the petition for enquiry in May 1921.

As to the relations mentioned, there is no question that they knew the 2nd Kumar. With the exception of the aunts, Sonamoni and Sudhansubala who saw the plff. in Calcutta during his stay there, and Akhil Babu who saw him in June 1921 after he had come to Dacca, the rest saw and recognised him in May 1921 during the plff's stay at Jaidebpur. Their evidence is that the plffs. recognised them too. It will be impossible to go into the details of these first meetings, numerous people have said that the plff. recognised them and spoke to them,

but I shall mention such as are of special value, specially in connection with topic of the plff's speech. One witness for the defendants admitted in cross examination that the plff, asked if he knew the visitors would say yes to those he knew, and no to those he did not know (D.W. 158 Chandra Kanta Chakraburty). The defendant's case that Budhu was there to tell him would seem to suggest that he the plaintiff was telling the reminiscences spoken to by the witnesses ; and in the depositions of the defendants, witnesses Budhu is very little in evidence, except to prove that the plaintiff was talking Hindi, and Budhu was interpreting, and the few witnesses who say this will be noticed when I deal with the plaintiff's speech.

Of the relations, Satyabahama's nephews have lived all their lives at Jaidebpur, practically speaking, and so did also Kripamoyee's step-son, Sures. His cousin Basanta was educated and served at Jaidebpur. Of these Sures deserves special mention. There was litigation between him on one side and Jyotirmoyee Debi and her sister and sister's son on the other, over Kripamoyee's property fought up to the Privy Council, and one would think that Sures is the least likely person to come to her aid by perjury.

The old ladies of Jaidebpur, Ananta Kumari, and Mokhada and Kulada, require some special notice. These have lived nearly all their lives—since their marriage when very young at Jaidebpur. They were the friends of the Rani and were looked upon as gurujan by the Kumars and their wives, as the 2nd and 3rd Ranis admit. They had seen the 2nd Kumar from or almost from his birth. One of them suckled the 2nd Kumar. If there were really anything against them, one of them would

not be asked if her daughter, a widow, and the mother of a grown-up son had not a second son, out of coverture, as if that even if it were a fact—in fact it was reckless and disgraceful suggestion—could discredit the mother.

Another relation who requires special mention is Kamal Kamani Debi, mother's sister to Phani Babu (D. W. 92) the witness on the other side. She is one of the two daughters of Swarnamoyee whom I mentioned, and this branch of the family lived in the Rajbari itself till 1893. The estate of Swarnamoyee is now in the charge of the Court of Wards, and the income, such as the estate can afford in view of the debts to pay to the owners, is going to Phani Babu and his brother's sons, except for Rs. 200 - per month which goes to this lady. One large item of the property if not the bulk of it, is a miras granted by the Kumar's grand father, and there is a question, as will appear below, whether the Bhowal estate is entitled to resume it at once, or at the death of Kamal Kamini at all events, so that the Manager of the estate of Swarnamoyee is a different person to prevent a conflict of duty when the occasion for a suit arises. In fact a suit was once instituted, but withdrawn on terms, and the supposed legal position would seem to place Phani Babu, as will appear below, at the mercy of the Court of Wards directly Kamal Kamini dies, and even the present peril to Phani Babu is not illusory, looking to the suit once started, but withdrawn. The evidence to shew this is on record, so that although Kamal Kamini is free to depose for the plaintiff Phani Babu is not practically as he received a pecuniary favour to which I shall come when I come to deal with his evidence, for his services against the Sadhu.

Now this lady, Kamal Kamini was a member of the Raj family when the Kumars were born, and she says she had suckled him and known him all his life. This lady swears to the identity of the plaintiff as the 2nd Kumar. I see no reason to disbelieve her.

I turn to some of the witnesses who certainly knew the Kumar, and who are not likely to make a mistake though they are not related : It is impossible to mention all, and it must not be understood that those I do not mention did not know the Kumar. For instance, all the old officers, all the personal servants, all the menial servants all the co-villagers, all the Talukdars on the estate, examined for the plaintiff, most of the trades people supplying goods to the family certainly knew the Kumar. Most of the tenants, and I believe, all, certainly knew him by sight, and few could forget him. Mr. Chowdhuri referred to the case of Adolph Beck and the risk of mistake to which evidence as to identity is subject. I recognise this risk, despite his total dissimilarity, but the witnesses before me had not seen the Kumar casually, but seen or known him as one sees or knows a co-villager, or a fellow-citizen in this country, at his home, or town residence, a familiar figure, of a known family, and striking appearance, on horse-back, or tom-tom, or elephant-back in the roads of Jaidebpur or streets of Dacca. It would be useless to go into the evidence of each and try to find out if there are any among these witnesses who did not see him. This judgment must be kept within reasonable limits, and with these in view, I mention the following names as to whom it is not stateable that they did not know the Kumar, or have forgotten him.

P. W. 62, Rebati Mohan Ghosh, 62, a senior pleader of Dacca. Has known the family from the time he was a boy. Lived for his education at the Raj office at Nalgola, where his sister's husband, a Muktear in Raja's service, lived with his family. Was teacher at Jaidebpur school from June 1899 to a date in 1902. Joined Bar at Dacca in 1905, lived in the said office of the Rajah, which is nearly opposite his Town residence till 1909. Was pleader of the Bhowal Estate till 1918. He knew the Kumars intimately, and had seen the 2nd Kumar even 10 days before his departure for Darjeeling. When he was a teacher at Jaidebpur he tried to teach English to the second Kumar. I shall deal with that when I come to the topic of the Kumar's literacy, but nobody can possibly suggest that he did not know the family of the Kumars. The only thing against his credit is that in a suit in which the question was whether a certain holding had been transferred in its entirety, he was not believed by the munsiff of Munshiganj. He was the defendant.

P. W. 61 Paresh Nath Biswas, 77, a respectable Talukdar of Bhowal; President of Bukhtearpur Union Board; knew the Rajah intimately; would meet the Rani after the Rajah's death; continued to visit the family after her death. Nothing going to his credit.

P. W. 63 Rajkumar Mukhati, 63, Muktear, at Mymensingh. In the photo with the 2nd Kumar in Ex. XL. His father-in-law, Sreekumar Bhattacharji, was a purohit to the Rajbari, and his uncle-in-law, a doctor to whose terms with the Rajah will appear from the Rajah's letters (Ex. 46 series and 47 series).

His wife's brother's daughter has married a son of Durganath Chakraborty, an officer of the plaintiff.

P. W. 112 Mr. V. J. Stephen, 49.

Now Manager of a firm, pay Rs. 525, and commission Rs. 5000 to Rs. 10,000 per year. President of the local Armenian church. Was, before the trade-depression, a big merchant doing business in the name of Lazarus. The Rajah's town house at Nalgola adjoins his premises, and he knew the family and the Kumars as neighbours, and would speak to them. Nothing going to his credit, except that he is not as rich as he used to be.

P. W. 155 Manindra Mohan Bose, 47. M. A. Lecturer, University of Calcutta. Formerly, Asst. Head Master, Jaidebpur school, from July 1908 to March 1910. The school it will be recollected almost adjoins the Rajbari. He would see the 2nd Kumar almost every day, unless he was out of Jaidebpur.

Nothing going to his credit.

P. W. Mesbahauddin Ahammad, 45, a very respectable Talukdar, of Fuldi, Bhowal. Nothing going to his credit.

P. W. 426 Nabendra Basak, 68, Zaminder, Dacca.

Zamindari, Rs. 12000 to Rs. 13000 per year, money lending 2 lacs—his and his brothers—8 or 9 houses at Dacca. Promoter, Dhakeswari Cotton Mills, hold shares. Rs. 50,000. Knew the Kumars mostly at Dacca. Nothing going to his credit.

167 Hemendra Kishore Acharja Chaudhuri, 52.

Zamindar, well known family of the famous Chandra-bali case decided by the Privy Council ; knew the Rajah and his family intimately - the ladies appeared before him. Nothing going to his credit.

P. W. 262 Jogesh Chandra Roy B. A. Head master of a High School was Head master of Rani Bilasmoni School at Jaidebpur from Nov. 1906 to May 1911. Nothing going to his credit.

P. W. 326, Charu Chandra Das Gupta, 54, Asst. Head master, Barackpur Governor's Park School. Was teacher at Collegiate school for ten years at Dacca from 1903, later, examiner, lecturer in a College at Dacca. Knew the Kumars very well. Tells how on one occasion the 2nd Kumar gave him a lift in his tom-tom and how on another occasion he saw the 2nd Kumar mount an elephant by stepping upon his trunk, which a Mahut examined on the side of the defendants said was a feat which was beyond the 2nd Kumar. A witness of the defendants (D. 266) saw the 2nd Kumar mount that way, and thus silenced a point of which a great deal was being made by the defendants.

P. W. Hemendralal Das, 50 Reversioner to a big Zamindari and resident of Dacca. Brought up in his maternal grand-father's family—he is the heir to his maternal grand father—the two families on visiting terms. Knew the Kumars from boyhood, and got intimate with the 2nd Kumar and admitted, which he hardly would at his present age if he did not believe that the plaintiff was the Kumar, that they would be in the society of prostitutes. The only thing against him is that he admits that he had got wild in youth—he hardly looks capable of it, was arrested in execution of a decree, has no property except expectations.

P. W. 458, Bhupendra Mohan Ghosh, 44 son of Rai Issur Chandra Ghosh, Bahadur, the late Govt. pleader of Dacca—Rai Bahadur was the pleader of the Raj, and

the two families were intimate. The witness was taught riding by the 2nd Kumar at Ramna, and brother Jnanendra, was an intimate friend of the 2nd. Kumar.

P. W. 459. Mr. N. K. Nag, Barrister-at-law 49.

Member of the Calcutta Bar. Does not practise since the death of his wife in 1926, except that he is Receiver in certain matters. Goes to High Court every day. Belongs to the well-known Nag family of Dacca, income Rs. 10000 per year. Two other brothers, besides himself, educated in England.

Was introduced to the 2nd Kumar in 1903 at Dacca. Got intimate with the 2nd Kumar, as Jnan Babu, a cousin of his, was an intimate friend of the 2nd Kumar. Met him frequently from 1903 to January 1904 and again from the middle of 1905 to the time he heard of his death. One day the 2nd Kumar called at dead of night at his house to borrow money from the witness's father. He came in a ticca garhi with people inside, obviously in one of his sprees and the money was wanted for girls. In cross examination the witness says that the visit was by no means extraordinary, so far as the Kumar was concerned, as his habits were known, and he admitted in cross examination, that he would sometimes associate with the 2nd Kumar in what Mr. Chaudhuri put to him as "stolen joys." The witness is a grave melancholy-looking man, and I do not think that he would publicly disclose this chapter of his life for the sake of a person whom he believed to be an impostor.

His first meeting with the plff, is very interesting. A committee presided over by Maharajah Tagore was formed to celebrate, by a party, the conferring of the

title of Rajah upon Rajah Srinath Roy. Mr. S. R. Das, Standing Counsel, was the Secretary, and the witness, the Asst. Secretary, who did everything connected with the function. He found the name of the plaintiff among those to be invited, and objected as the man had been declared an impostor. He was told something, and he said; "All right. I am going to verify whether he is the Kumar or not. If he is the Kumar he is bound to recognise me." This was in 1925—January 1925, when the plaintiff was in Calcutta. The witness secured his address, and called at his house in Harish Mukerji's Road. "As I entered I found two gentlemen talking with third in a room on the ground floor. I saw the faces of the two gentlemen, not of the third they were talking to. As I entered, one of the two gentlemen whose face I could see asked what I wanted. The third gentleman then turned round and looked me in the face, while I looked him in the face then he, the third gentleman rose from his chair, and said:

"Aieh, Naga" (Hallo, Naga) saying this he caught hold of my hand, and put me in a chair, and said: "Saheb haichas" "Bilat gechhili." (Oh you have turned a Saheb. Been to England ?)

The witness adds that the 2nd Kumar used to call him "Naga Hala," or "Naga Beta" or "Nirmailla" each an affectionate and vulgar corruption of his name.

The witness had recognised him before he had put him into a chair but asked:

"How do you know I am Naga" ?

He said: "Tui Bal, tui Naga na ?" (But aren't you Naga ?)

I said ; “You can’t answer a question by putting another”. Then he told my father’s name, and the name of my uncle, Issur Ghose, the name of Jnanen, the name of Surendra Bose, son of Sib Babu, a doctor of Dacca, another associate in his escapades. Then I told him : “you might know all this, Some body might have told you, I would come. “Very well’, he said, I shall tell something which nobody else knows except you and your father”. And then he told the midnight raid.

“After the plaintiff narrated this incident I clasped him, embraced him and said how glad I was to find him alive”.

The witness went back, told Mr. S. R. Das that the plaintiff was the true Kumar. The plaintiff was in the party at Gaulstone Park, and he is in the photo taken there (Ex. XLII). Mr. K. C. De, I. C. S. who came long after this witness saw him there.

Nothing discredits this gentleman, unless the plaintiff could not speak Bengali at all in 1925 as Mr. Chaudhuri suggested to Mr. S. D. Ghosal, barrister, in 1931, during his examination on commission. That case became less downright particularly after Mr. K. C. De, I. C. S. a witness for the defendants, said that the plaintiff during an interview, spoke to him in Bengali in 1924 before he had left Dacca for Calcutta. What sort of Bengali it was, whether it was the Bengali of a Bengalee, or of a Hindusthani, or whether it was still Atul Babu’s unintelligible Hindi of 1921, or whether it was the Bengali of Bengalee who had been talking Hindi and nothing but Hindi for 12 years will be fairly large topic on which there is a great deal of evidence which will have to be discussed below. That in his youth the witness mixed with the

Kumar and his women—had what Mr. Chaudhury called “Stolen joys” does not discredit anybody.

(P. W. 666) Rames Chandra Chaudhury, Zamindar, 50, son of a former Govt. pleader of Dacca who and the Rajah Rajendra were great friends—the Rajah was present at his death-bed. The witness grew intimate with the Kumars after the death of the Rajah. Nothing going to his credit.

P. W. 631 Surendra Chandra Bhattacharjee, Retd. Inspector of police knew the Rajah, and the Kumars. Had occasion to go to Jaidebpur in his official capacity as well. Nothing going to his credit except that his nephew has deposed for the plff. This nephew Nagendra, is the son of Dr. Surja Kumar aforesaid was admittedly personal clerk of the Chhoto Kumar.

P. W. 792 Rajendra Kumar Roy Choudhuri, 55.

Belongs to the well-known family of Romanath De of Dacca. Owns, with his brother, a fifth share of zaminderies in several districts whose rent roll is $1\frac{1}{2}$ lacs. He and his brother own house property at Dacca and elsewhere, flour mills money-lending, and other businesses at Dacca. Patna, and other places.

A man of high position at Dacca, zaminder, money-lender, Banker. Knew the 2nd Kumar very well. Admits having gone on river-trips with the 2nd Kumar, and his prostitutes. This gentleman would hardly come to court and go through the identity of such disclosure of what he did in his youth, for a man whom he does not believe to be the Kumar.

P. W. 813 Brajo Gopal Basak, zeminder, Dacca.

Belongs to an old family at Dacca. Owns Zaminderies in these districts, income for his own share, Rs. 17000 or

thereabouts. Owns considerable house - property at Dacca, a portion of his property under Court of Wards ; the family whose debuttar bears the whole cost of the famous Dacca Missil of Tantibazar. Knew the Kumars very well. The 2nd Kumar would come to his house to watch the decoration before the start of the Missil, and descend from his elephant and have a smoke from a hookah.

P. W. 890 Abul Kasem, 51, Brick -merchant. house property at Dacca, besides dwelling house, owns Taluq, father's excise and a market. Used to go to Jaidebpur to inspect his business, a liquor shop. Knew the Kumars well.

P. W. 903 Rai Saheb Ananda Chandra Ganguli, a retired Asst.. Surgeon.

Saw the Kumar first in the house of his mistress, Elokeshi, who from a fiction became a reality on the defendants' evidence. The doctor, then attached to the local jail, called to treat the girl who was in fever. The Kumar sat near the girl nursing her. The doctor met the kumar in that house during his subsequent professional calls, and met him also at Nalgola house. All this between 1903 to August 1904.

There is nothing going to the credit of this witness except that he was seen one day at Court apparently to watch the proceedings ; but it may be said that he did not see a great deal of the Kumar.

P. W. 909 Jogesh Chandra Roy, pleader, Issurgunge..

Was a student at Jaidebpur H. E. School from 1906 to 1909. Lived in the school Boarding. I consider the students in this school which was the Raj affair the most important witnesses in this case. Those who lived in the

attached hostel would see the 2nd. Kumar go to the stables, and the Pilkhana every day, and they would go to him for subscriptions and the like, and would work and serve food at functions as did this witness. on the occasion of the Rani Bilasmoni's Sradh To this witness we owe the Stepleton incident which will have a bearing on the 2nd Kumar's literacy. The incident, except for an essential detail, came to be admitted.

Nothing going to his credit.

P. W. 921, Hiranmoy Biswas, 53 of Dacca.

Pleader of 24 years' standing at the date of his deposition. Owns a share in zamindaris, and the income for his share is Rs. 10000. Zaminderies in Dacca, Bogra and Mymensingh.

Part proprietor with Bhowal in Wise Estates. Bhowal holds some tenures under him and his co-sharers.

Educated at Dacca. The Rajah helped him with money when his family was in difficulties. Witness and his brother would visit at the Rajbari, and the Rani, the Kumar's mother, will appear before him and his brother. The Bara Kumar was then about 11. The witness was present at Bara's marriage. Witness saw the Kumars after that at Jaidebpur, at Nalgola house, and he would see them at Jaidebpur during the time. Mr. Jnan Sankar Sen Manager, and he saw the 2nd Kumar last 2 or 3 months before he went to Darjeeling. He saw him on this last occasion at Nalgola house where he was accustomed to call.

There is nothing going to the credibility of this witness. He denies that he had any litigation with Bhowal, or that...Bhowal had set up a rival "but" to his prejudice..

It seems to be a wild suggestion, because nothing else could be thought of. He was asked that if he believed that the 2nd Kumar is living how could he file complaints describing the first defendant as a widow. The idea of this question seems to have been taken from the cross examination of Bararani that in official letters she went on describing the 2nd Rani as a widow. Complaints by or against the defendants merely follow the present legal position, irrespective of belief.

P.W. 908 Kali Mohan Sen, retd. Deputy Magistrate, 64.

Met the Kumars in 1907 at Jaidebpur, and was their guest for a day and night. Met them on other occasions in 1907, at Dacca, Nalgola, Calcutta. The Kumars were in Calcutta in January 1907, it will be remembered until their mother died. Met them in 1908.

The only thing against this gentleman is that he has recently renounced all his property and assumed the dress of a sadhu : and Mr. Chaudhuri elicited in cross examination that he believes in miracles, and holds the view that the Bible does not contain lies. Mr. Chaudhuri tried to elicit, from more than one witness, whether he believed in miracles (E. G. 435) one believing in miracles might be a good witness, and might even be a greater believer in truth in speech, and as to the garb of a Sadhu, all lives are not cast in the same mould, and I do not see anything in the life of a Sadhu hostile to the duty of speaking the truth in ordinary matters. What is really against the witness is that he seems to have seen the Kumar rather less than the other witnesses I have mentioned, but it is impossible to say that a man must be seen a given number of times before he could be recognised ; compared to the others he had seen the Kumar less, so that although he is

good enough to dispose of the utter dissimilarity theory, on a question of identity one would hesitate to act on his evidence.

Gobindo Chandra Roy, Advocate. High Court, 66 (on commission).

Advocate since 1895. Had long been the retained Pleader of the Bhowal Estate in the High Court, and continued so under the Court of Wards until "I came to know that the Kumar had come back." He saw the Kumars during their Calcutta visits which were many. Was present during the Rani's last illness in Calcutta.

Dr. Narendra Mukerjee, Chinsura, Hughly (on commission) Civil Surgeon (retired).

Was posted at Dacca from 1904 to August 1917, as teacher of Dacca Medical School. Knew the Kumars very well, and knew their sisters too.

These are some of the gentlemen who certainly knew the Kumar, and who, with the possible exception of Kali Mohan Babu, and Rai Saheb Ananda Ganguli, cannot possibly mistake him.

There are numerous others who belong to this category i. e. who knew the Kumar, and could not possibly mistake him. It is impossible to name them all. They are decent people, though not rich, the ordinary folk who get on in life without wealth, but with means enough for a reasonable living, by no means the riff-raff, trades people, shop-keepers, small landholders, ordinary doctors, teachers, priests, landlords' agents, kabirajes, and the like.

Of these, I must name the ten personal servants : Protap (p.48), Nanda Kisor Tewari, the 2nd Kumar's guard (p. 49) ; Provat another Khansama (P. W. 52) ; Budhu (P. W. 65), Nunia Banua (P. W. 69), Maran Chand

Mandal (P. W. 294 who used to massage him), **Dengari Mandal** (P. W. 680—the lamp-man); **Bhagaban Kaibarta**, **Punkhawala** (P. W. 58) who is hit by a statement taken from him (Ex. R). The genesis of such statements is known. It was the “sample evidence” of **Rai Saheb** which **Naibs** were ordered to secure, and which **Rai Saheb** himself did a little on his own account (vide D. W. 409).

In connection with this list I may mention **Chandranath Singh** (P. W. 162) a **Manipuri Jockey**, whose evidence on the subject of **Polo at Jaidebpur** will be important when that topic will be considered.

Of the personal servants, **Protap** and **Probhat** have alone given in this suit an account of the beginning of the 2nd **Kumar's** syphilis. Their account on this point stands alone except that another witness, **Upendra P. W. 74** a compounder at the **Rajabri dispensary**, could give a little information on the point. It will be of some importance when we come to deal with the marks on the **Kumar's** body, if any.

The evidence of the **Railway servants** posted at **Jaidebpur** or between **Jaidebpur** and **Dacca** the **Kumars** would go backwards and forwards between them—is that of honest men some of whom do not belong to **Dacca** at all. One collects from these witnesses (P. W. 45, 54, 57, 77, 237, 306, 438, 483, 565, 602, 620, 645, 652, 730, 756, 825, 854, 906, 982) that one favourite resort of the 2nd **Kumar** was the **Railway station** in the course of his drives or rides. He would go into the station office, speak to the **Babus**, do this and do that, and generally fidget about, and would smoke from their **hoochah**. I do not think that all these railway people are competent to give reassuring evidence on the question of identity, if the

plaintiff is very much like the 2nd Kumar, and not more, but some of them could not possibly forget him, or mistake him. One of them is Ashutosh Banerjee who was the Station master at Jaidebpur from the first part of 1908 to 1910. Another is Atul Ghosh, Asst. Station master, from 1906 to October 1907, but later, he became guard, and went up and down the line. Ashu Babu was the Station master when Lord Kitchener came, and also when the 2nd Kumar went to Darjeeling, and he still remembers him saying : "Master, where is the carriage ?" (in Bengalee). This gentleman used to have a long beard. He went to see the plaintiff at Jaidebpur at the house of Jyotirmoyee Debi. It was in May 1921. Budhu asked the plaintiff "Mama do you know him ?" The plaintiff looked at him, and after a pause, said "He is Ashu Babu", "but where is your beard" ? he asked.

Among the old officers I should name :

P. W. 1. Bepin, 64, clerk in chief Manager's office, Sudder (1308-1322).

P. W. 2. Surendra Adhikari (1304-1318). Surveyor.

P. W. 66. Rames Chandra Ghosh, Naib (1301 to 1320).

P. W. Haranath Dhar Gupta, clerk at Sadar (1289 to 1306).

P. W. 387. Arun Kanta Nag, Naib, (1301 to 1308)

P. W. 664 Purua Chandra Dutta (1309 to 1320).

P. W. 907 Rasik Chandra Roy Mahasay, Asst. Dewan in 1309 ; later Dewan in 1314 when the old Dewan Issur Mitra retired.

P. W. 925 Durga Saukar Chatterjee, Mukhtear (1286 to 1327). As against the old servant of the estate there is the fact that he was dismissed and there was as

against him an account suit which led to a decree for Rs. 12.

Among the menial servants occur grass-cutters (p. 22 and 23) the family barber (p. 14). a cowherd (p. 28). a Khansama of the Rajah (p. 40). a beater (p. 67), a mate (p. W. 168), three farashes (p. 183, 680, 189) the family washermen (p. 210, 292) peons (230, 231, 441, 467, 468, 542 642, 719) a gardener (p. 275), punkhawalla (357), Mahuts (39, 581, 636), a waterman (p. 829) waterworks man (p. 888), Among trades people there are a family potter (P. 25) drummers (p. 47, 678, 706, 707) and tinkers (p. 644, 717) jatrawalas (p. 375, 712) goldsmiths (665, 709), mistry (683) Milkman (p. 21) painter (p. 913), the man who used to supply theatrical goods, (p. 320) musicians p. 434,444, 862).

In short there is no end of such people as get attached to an old landed proprietor in the Mofussil.

Among the Taluqders on the estate that is to say, the large tenure holders under Bhowal, each a minor landlord, and a local magnate, not always by reason of his individual share, but as one of a family holding the taluq. I need mention one only-the largest among those called. He is Babu Digendra Narayan Ghosh of Harbaid. He is the President of the Pubail U. B. his Taluqs have a rent-roll of nearly Rs. 10,000 and he has been, from the very beginning, one of the staunchest supporters of the plaintiff and cannot be looked upon as a disinterested person, looking to the numerous other witnesses who are neutral his adherence I believe, arose from his belief, and not from any indirect motive. He, it will be recollected, was the President of the Proja and Taluqdar samiti, and he has borrowed Rs. 32,000 to Rs. 35000 to accommodate the

plaintiff. For a partisan his evidence, if truth did not restrain it, has a strange restraint. His first visit to Jaidebpur was on the occasion of Jyotirmoyee Debi's marriage (1899). Then he went on business in Rajah's time, in Mr. Meyer's time, and in Mr. Sen's time, say, about a dozen times in all, and he came for the last time in connection with the deed which the 2nd Kumar executed on the 12th April 1909, five days before he set out for Derjeeling (Ex. 27). The fact however remains that he is not an indifferent person ; and in this case adherence to the plaintiff as Kumar goes for nothing. It is enough however to say that the Taluqders knew the Kumars just as they knew the Railway stations, or just as they knew Jaidebpur.

From Dacca town itself have come also a large number of witnesses, shop-keepers, traders, ordinary bhadralogs, Hindus and Mahamedans alike and some men of position. The Kumars would frequently come to Dacca—it is an hour's journey from Jaidebpur and stay at the Nalgola house, called the 'Nirnibas' on the river side. The 2nd Kumar would drive out in his tom-tom, or attend parties, visit his mistress or mistresses (920,996) go out on his river trips with women, probably in his boat, or launch, called Matia, bathe in the river on the back of the house, attend parties and functions, but would be mostly seen in the stables opposite the house. People who saw him in the house, or in the streets, or at the stables, or in the river into which he would take a plunge from the 'posta' of the house, or in the annual Missil of Dacca where he would go up and down in his decorated elephant, himself a show of the Missil, as one witness has said (p. 435) have come and deposed. It is not necessary to name them. It is not

necessary to state their evidence in detail. It will be dangerous to suppose that they are all competent to testify on the identity, if that is a nice question. It is useless however to compare the Kumar with an obscure man in London casually seen for a day, and then later confused with another, looking like him, and equally obscure, and common place.

II. Witnesses whose credit is unquestionable, but whose recollection of the 2nd Kumar may be questioned.

Of these, I need name only these :—

P. W. Subodh Kristo Bose, a respectable man of Calcutta.

Born and brought up in Calcutta. Nephew of Rajah Benoykristo. Met the 2nd Kumar in 1905 or 1906, and again in 1908, looking to the fact that he saw him at the Dharmatola house where the Kumar lived in 1906, and that he did not go to Calcutta in 1907.

P. W. 600 Romes Chandra Sen of Senbari, Mymensingh P. C. Gupta, Engineer of Calcutta. (P. W. 461).

He was almost a friend of the Kumar, and mixed with him rather intimately, but he was only about 17 when the 2nd Kumar went to Darjeeling. He rode with him, and would pay visits to the Rajbari, and to the Dacca house, and then the Kumars would call at his house, but he saw the plaintiff in 1924, some 17 years after 1909.

P. W. 580 Preo Nath Saha Banik, a rich business man of Dacca. Considerable house-property, and large business but had seen the Kumar only in streets or out-of-doors.

P. W. 89 Mr. G. C. Sen, the agent who acted in the

matter of the 2nd Kumar's Insurance in 1905. He is satisfied after seeing plaintiff in 1934 that he is the man, but he had to put test questions, and I am not satisfied that it was recognition.

P. W. 189 Sarat Ghosh, retd. Inspector of Police, '62, saw the 2nd Kumar generally in the streets, and twice only at the Nalgola house, as an invited guest. He saw the 2nd Kumar on one of these occasions in a room with friends, and 4 or 5 prostitutes.

I am not considering anybody who has seen the 2nd Kumar only in the streets, or generally in the streets.

P. W. 894 Makhan Lal De, merchant, 50, business at Dacca and Calcutta, house property at Calcutta and Dacca.

P. W. 948 Ramani Mohan Basak, retd. Agent of Imperial Bank (Branch).

P. W. 1001 Upendra Chandra Chatterjee, B. L. Pleader, Munshigunge.

P. W. 1012 Sannyasi Charan Roy, pleader.

P. W. 1024 Ramani Mohan Goswami, pleader.

Of these Sannyasi Babu would not go beyond a belief, obviously without recognition, produced by "striking resemblance".

He did not know the 2nd Kumar except by sight, and that in a casual way, and his evidence is of no use. As to the rest in this list there is the bare possibility that their recognition too was no better.

The most important name in this list is Babu Ashutosh Banerjee, Zaminder of Dacca, and a gentleman of the highest position in this town. He is P. W. 951. He belongs to the well-known Murapara zamindar family,

Income from zamindari $1\frac{1}{2}$ lacs, house properties at Dacca, and income other than that from 'zamindari' which is income tax free indicated by the figure Rs. 4000 paid as income tax. The family was on friendly terms with the Bhowal family.

The witness is 44 years old—at the time he was deposing so that he was about 19 when the 2nd Kumar went to Darjeeling. He saw the three Kumars at parties, at the Missil, and in carriages. He says that he remembers the appearance of each of the Kumars. He saw the 2nd Kumar at the farewell party given to Mr. Rankin which the 2nd Kumar admittedly attended at the Northbrook Hall on 27.7.05. (vide D. W. 310 Rai Saheb). The witness saw the 2nd Kumar last at a Garden party given to Sir Lancelot Hare in 1909.

He had no speech with the 2nd Kumar at any time.

He saw the plaintiff at his house in Bhadra (August, September) 1328 ~~in~~ some four months after the declaration of identity. The witness says that he recognised him, and took him in to his mother and grand-mother, and called at his house several times. In March 1934 the witness asked the plaintiff if he remembered where he had seen the witness first. The plaintiff answered that it was at the farewell party given to Mr. Rankin, Mr. Chaudhuri asked.

"Are we to understand that you were convinced that the plaintiff was the 2nd Kumar because he mentioned this matter of Mr. Rankin?"

A. Fully convinced.

It looks like belief without recognition, but nothing in the appearance had given a shock of difference even in 1921, and this evidence must be added to the numerous

considerations that exclude the total dissimilarity theory, framed to fit 'the conspiracy by a few designing persons', and adhered to without much thought, till the end, though it can now fit only a gigantic, motiveless, and impossible conspiracy for an impossible man. As I heard the case looked at the tide of evidence, and to the witnesses of all ranks and conditions, most older than fifty, and hardly any younger than forty, many grave, elderly people whom one would not suspect of romance, or none going the length of perjury, it seemed to me as if somebody had denied the Buriganga, and the witnesses were pouring in to say that the river is there.

I have not discussed the evidence of these witnesses beyond mentioning the names of some of them, as their evidence internally discloses no mark of falsehood, not only as to this single fact of identity, but as to any other fact going to the family history and the like. There is however testimony on the other side, against the identity. Number does not count.

The Court will have to look to (a) the quality of the evidence on either side—the credit of the witnesses, their position, education, power of observation, how far they recollect the Kumar, any reason they have for telling an untruth, any proved falsehood in their evidence uttered to support case such as the case as to the literacy or the dress of the Kumar, or as to any particular feature, such as the colour of his eyes, or the shape of his nose.

(b) Any facts incontrovertible in the whole mass of evidence—the rocks in this apparent morass—that prove or displace this identity claimed. Fortunately, there are such rocks.

As to (a), I have already observed that nothing goes to

the credit of the witnesses I have named, and of others I have not named, They certainly knew the Kumar, and would not mistake him—I am referring to that list. On general grounds there is nothing to discredit them, unless they are discredited by what they have said about the literacy of the Kumar for instance, or any other disputed feature. That will transpire when I come to discuss such points in detail. But on general grounds, not going to such points, most of the witnesses on the other side inspire no confidence. I turn now to that evidence.

Direct evidence negating identity on defendants' side.

The defendants have examined 479 witnesses in all, including 44 on commission. Leaving aside for the moment those called to prove that the plaintiff is Mal Singh of Aujla, and those who do not speak to identity at all, the total number of those who say that they knew the 2nd. Kumar, and that the plaintiff is not the man is 374.

Out of these, 56 are bhadralogs, not in the service of the estate, though this number included people who are employed in Raj schools at Jaidebpur. The rest are tenants or menial employees of the estate, or peasants—these are few of the kind that will come within the category of tenants. Mr. Chaudhuri handed me a list of tenants where they numbered 219, but the list contains omissions. He handed to me a list of servants, numbering 21. Of these 10 are in the service of the estate and all, except one, are tenants. The exception is D. W. 132 employed by the estate when necessary. He handed to me a list of bhadralogs—83 in all—but this is incomplete and of the 83 names on the list 42 are naibs, or other employees still in the service of the estate.

As to the tenant witnesses, generally speaking, they are obviously the product of "the sample evidence letter" of Rai Saheb quoted above. They were sent to Court by the Naibs in the charge of peons, as whoever was asked admitted. The difference between these and the similar batch produced by the plaintiff is that the latter came to depose for a man not in possession—whatever the legal effect of the collection of rent by the plaintiff in 1929 and the three years that followed and braved certificates, and the orders quoted above that the naibs should see that not a tenant of the estate deposed for the plaintiff. They also differ from the defendants' batch in being, generally speaking, more substantial. The defendants' tenant witnesses are generally speaking, tenants of the poorest description. A tenant of Pirujali is an exception, but he holds a hat for a term. Nothing can be decided on their bare testimony, except such facts, may be, as were extracted by cross-examination.

The same remark applies to the Naibs and other employees of the estate. The orders (Ex. 353 (1)) were that they must see that nobody deposed for the plaintiff from their areas. They did not leave them free. One Naib was asked to shew cause why he should not be dismissed, as a man within his area had escaped, and come to depose for the plaintiff (Ex. 353 quoted above). One Naib admitted in cross-examination that if he said that the plaintiff was the Kumar, he would lose his post of course (D. W. 329). Mr. Mohini Mohan Chakraborty the former Asst. Manager holds apparently the same view. He says that his view is that if an employee merely said that the plaintiff is the 2nd Kumar that would be propaganda as others would follow suit ; they must not say

openly what they honestly believed ; that if they did so, they could not consistently discharge their duties to the estate ; that if the witness's honest belief did not coincide with the views of those under whom he serves, he would not disclose it. Apparently because of this view and going a little beyond it, he deposed in a case under sec. 144 when a restraint order against the plaintiff was necessary that he had talks with the plaintiff though his present evidence is that he had none (Ex. 338). As I said before, you can keep your servants on your own terms, but cannot put them forward as witnesses, if your terms are what the orders indicate. Nothing can be decided on their bare testimony, unless facts, otherwise proved, support it.

Another general remark is that not a single citizen of Dacca where the Kumar was a well known figure has been called for the defence, except one man. The exception (D. W. 79 Madhab) proved a joke. He begins by saying that he lives at Sonakuti, Dacca town. It turns out that his house there, if he had one—was sold about 1915 to his sister's husband who he says, was his Benamder. He says again that he the vendee had bought the house with his own money, and in a frantic attempt to keep some consistency, talks of another bari near about, which he still owns, but which he sold to Benamder who has been keeping the deed, and has been in possession for 14 years, while the witness is living at a hired house, after he returned from Bijni in Assam, where he cannot say he went when. He denies that he was a pleader's clerk at any time, and then admitted his diary which he kept, as such, up to 12th Nov. 1929. Yet this witness who knew nothing about the Kumar, looking to his history, came to prove the detailed case as to the

features of the Kumar. The witness is now unemployed, and one does not see how he makes his living. He admits he was got hold of in a pan-shop of Dacca by an agent of the other side.

Leaving aside for the moment the employees of the estate there remain the following 40 witnesses examined at court, plus 15 on commission on the question of identity :

- (1) Lt—Col. Pulley
- (2) Mr. Rankin, I. C. S. ret'd. (D. W. 2).
- (3) Mr. K. C. De, I. C. S. (D. W.)
- (4) Mr. J. N. Gupta, I. C. S. ret'd. (On commission)
- (5) Mr. Meyer, the former Manager of Bhowal (on commission)
- (6) Mrs. Meyer (on commission)
- (7) Mr. Saradindu Mukherjee, a respectable gentleman of Calcutta (D. W. 120).
- (8) Lt. Hossain, a zeminder of Mymensingh (D. W. 6)

Lt. in Indian Land Forces. On his own account has little property left, heavily involved in debt. Admits decrees aggregating Rs. 1,63,000, and another whose figure is not known. His zamindaries all sold.

Would not admit, without great trouble, in which year he had passed the Entrance Examination, until he gave the year 1904. That keeps him in Calcutta at Presidency College up to 1905. Came to Dacca for further college education but would not fix the year until he gave one year or so at Dacca College up to the end of 1908. Joined the College about May or June 1908. Placing his shoots with the 2nd Kumar in 1906 or 1907 when he was not at Dacca at all, and tries his best to keep the year he joined the College in a fluid state, so as to retain his evidence. Talks of dinner with the Kumar in Calcutta in 1904, 1905, 1906

1907, 1908 not knowing that the Court is in possession of exact details of the Calcutta visits of the Kumars. He comes into conflict with these, as will appear when I come to the topic of English dinners, and his dinners are absolutely wiped out.

(9) D. W. 14 Kali Prosonno Chakraborty ; Asst. Teacher, Rani Bilasmani High School ; as good as an employee, entrance failed. His evidence goes to most of the point put to the plaintiff in cross examination, and this evidence will be considered below.

(10) D. W. 3 Jogendra Sen, 64. an old servant of the estate, recently retired. Allowed to withdraw his security during the trial. lives at Jaidebpur with his nephew who is the Asst. Record keeper of the estate. A shop-keeper got a decree against him, and he satisfied it by giving his huts.

(11) D. W. 22 Rai Mohan Mazumder, 51, a former Naib. Dismissed by Bhowal; dismissed by the next employer, suspended by the 3rd, working on Rs. 15 per month, and food. House mortgaged. Admits he is in reduced circumstances.

(12) D. W. 23 Abdul Wajid, calls himself a Taluqdar rent roll' Rs. 108 per year. Forgets whether he was imprisoned, but pressed, admitted a term of 7 years suffered for conterfeiting coins. A tenant of Phani Babu (D. W. 92)-

(13) D. W. 32 Sarat Chakraborty, 75, a Brahamin of Namasudras, deposed, rightly or wrongly, as degraded. Sells things at hats. Took 4 years' instalments to pay a decree for Rs. 10.

(14) D. W. 42 Sreenath Roy, 41, was at Jaidebpur. School in 1906-08. Unemployed. Has 8 khadas of lands .

Collects barga for Ashu Doctor, and when he goes to Calcutta, stays at his brother's house.

(15) D. W. 77 Basanta Bal, 50. Was employee of the estate. a clerk from 1313 to 1321. Held elsewhere a post, recently on Rs. 18, says resigned, but admits after denying it, having given a note for money due to his employer and obviously embezzled. Now unemployed. No means of subsistence except Rs. 70 per year and 40 mds. of paddy from land, if that is true.

(16) D. W. 78 Manmohan Banerjee, 65.

Belongs to Faridpur. Lives at Dacca upon his son-in-law as he admits, but says he pays money when he runs short. Says he owns a share in a house at his village home. The house was built by his brother, and his sons, but he says he contributed to the expenses, out of his salary of Rs. 20 when he retired. I believe that the witnesses I have been considering all knew or had seen the Kumar. I have got to decide whether they are telling truth—but this witness had neither seen the Kumar nor knew anything about him, so that I doubt if he had served at Kaligunge at all, as he says he did, with a view to prove a certain point connected with that cutcharee. He says, for instance, that he was present at Jaidebpur when the Kumar's death news came, but he could not call it an untimely death, seeing that he was 50 or 55.

(17) D. W. 87 Saubhagya Chand Sett, 45, a son of Lab Chand Sett of Labchand Matichand, the Jewellery firm I mentioned above. He was about 18 when he saw the 2nd Kumar last in Calcutta. His uncle, Matichand a partner, is living, and had, on his account, as much opportunity to see the Kumar as he, if not more. He is

not called, though there was a good reason for not calling the nephew, unless that was the reason for calling him. He, this witness, was a complainant in a criminal case before Satya Babu as an Hon. Magistrate at Alipur, and he came to Dacca to depose on 4. 4. 35. and went back when that case was pending. He actually deposed after the judgment of conviction was passed on 23. 4. 35 and since reversed. There is nothing in this last, but he was selected as a witness when the case was going on (Ex. 406 (a), and the mind of the witness matters.

(18) D. W. 92 Phani Bhusan Banerjee, 48. He is the grandson of Swarnamoyee aforesaid, the step-sister of Rajah Kali Narain Roy. It will be remembered that this lady with her husband lived on a part of the Rajbari until 1300 or 1303 when she removed to a house of her own called the Nayabari, on the river side at Jaidebpur. This lady had two daughters, Kamalkamini and Mokhoda. The former has deposed for the plaintiff, and Phani Babu and his sister Saibalini have deposed for the defendants. They are the children of Mokhoda who are dead. One large item of the property left by Swarnamoyee was a Miras whose rent roll is Rs. 10,000 and Phani Babu admits that the pattah creating it contains a provision that it will not go to daughter's sons. The Court of Wards did therefore bring a suit after the death of Swarnamoyee in 1917 to avoid the Miras, as the properties of Swarnamoyee are now held by Phani Babu and his brother's sons under will of Swarnamoyee. The suit was withdrawn with liberty to bring a fresh suit apparently as one daughter, Kamalkamini is still living, and it was withdrawn at the instance of the executor, Pakrasi who is Phani Babu's father-in-law. This was in 1924, and the suggestion is that Phani Babu had these favourable

terms, including remission of a large sum due as interest on arrears of rent, in consideration of his services against the Sadhu. Phani Babu admits the suit. He admits the remission, Rs. 6000, but does not admit that it was the price paid for services towards the Sadhu. One finds the terms of this forbearance to sue in a letter which the defendants themselves have put in a letter of Mr. Needham their Manager dated 6.5. 23 (Ex z 204). The reason given for the remission, and possibly of the easy instalments is Phani Babu's faithful and loyal devotion to the estate during the present trouble. One knows of no other trouble than this Sadhu, but the fact remains that Phani knows the peril of resumption for which I notice the 1st. Rani was insisting in 1924 (Ex. z 271) even after the withdrawal of the former suit, and he implored, as he admits, that his estate should be taken charge of by the Court of Wards, which was done despite objection by the 1st. Rani (Ex. z 272) in view of the conflicting interest, though the *Miras* was kept out of the charge, and is being managed by the Court of Wards, Manager under an irrevocable authority granted by Phani Babu. Phani Babu therefore could not go against the Court of Wards, or displease two of the Ranis without instantly making them clamour for an immediate suit. The credit of this witness however, has been absolutely destroyed, as I said before by a sort of lesson-book prepared for him so that he, put forward as a measure of the 2nd Kumar in literacy and general knowledge might play the role. To that I shall come below.

(19) D. W. 93 Giris Biswas, a *pundit* in the Gockey Minor School kept by the estate at Jaidebpur. He is as good as an employee of the Estate.

(20) D. W. 98 Anutosh Das Gupta, 47, a professor at

Bangabashi College, Calcutta. A brother of Dr. Ashutosh Das Gupta.

(21) D. W. 100 Rames Sircar, 45, whose father is living, has no means to educate his son. Father, a small man. A relation of D. W. 108.

(22) D. W. 108 Umes Chandra De Sircar, 48, another Pundit at the aforesaid Primary school of the Raj. Pay Rs. 20/- I mentioned this witness in connection with the medicine-man case ; no noise, no sensation, nobody coming to see him or suspecting him to be the 2nd Kumar until the 4th May, 1921.

(23) D. W. 122 Romanath Biswas, 55, brother of Giris Biswas, D. W. 93 of the primary school aforesaid.

A man of straw, though he calls himself a Taluqdar.

(24) D. W. 124 Satis Mitra, 54, settled in to Bhowal in 1319. Says he was coming and going to get land since Falgun 1314, and got it in 1319, i. e. three years' after the 2nd Kumar's supposed death. Has no house of his own. Obviously knows nothing about the Kumar (unless he was going to get land) but prepared to prove every detail as to the nose, lips etc.

(25) D. W. 129, Jaineswar Chakraborty, 60, another man of straw. Has land, enough for 6 month's subsistence, and talks of his disciples, and his son's pay of Rs. 80/- and of his own money lending (Rs. 3000/-).

(26) D. W. 158 Chandra Kanta Chakraborty 52, Was a surveyor in the service of the estate from June 1903 to December 1904. His circumstances must be bad, looking to his debts which led to attachment before judgment, and all that he says he has a house and a taluq bringing an an income of Rs. 250/- per year. A relation of Sarba Mohan Chakraborty examined on commission.

(27) D. W. 183 Sures Chandra Ghosh, 49.

Calls as himself Taluqdar, because he says he has an income from Taluq of Rs. 400 - per year. I doubt this, as he was brought to Dacca by a Sadak (peon). What property he has is subject to mortgage.

(28) D. W. 280 Sukumari Debi, 42, a cousin of the defendant No. 1. She was born in Kartik 1300, married in 1313 and went to her husband's house 2 years after that ; and she had seen the 2nd Kumar last during this period.

(29) D. W. 281 Pramatha Chakraborty 48, a Branch Post Master on Rs. 7/-, per month, says he has taluq with an income of Rs. 450/- per year and some land. Sarba Mohan Chakraborty examined on commission is his sister's husband.

(30) D. W. 283 Kali Mohan Chakraborty. His son is a clerk in the service of the estate. He describes himself as an *asrita* (dependant) of the Raj, and came to prove what happened at the 2nd Kumar's Sradh, and said that he came by A. B. Railway from Tangi, and was paid his Railway fare, though the A. B. Railway had not come into existence until afterwards.

(31) D. W. 292 A. M. A. Hamid, Khan Saheb, 45. Saw the 2nd Kumar at various functions. 'I think I have a good opinion of their appearance,' he says. Did not think that the plaintiff was the 2nd Kumar, but admits he may be mistaken.

(32) D. W. 310 Rai Saheb Jogendra Banerjee. In the service of the estate from 1904, known as the Secretary. Was dismissed in 1934. Was till then the Chief *Tadbirkar* of the estate for this suit. Has filed a petition for reinstatement, but does not, he says, expect it.

(33) D. W. 348 Rai Saheb Umesh Dhar. Was President of the Kaligunge Union Board for 20 years ; is still President of the Kaligunge Union Court ; member of the Kaligunge Rajendra Narayan School which gets a large grant from the estate. His brother employed in Kaligunge School, another brother at the Raj Dispensary at Kaligunge, a sister's son employed there as a doctor. Another brother was Naib when he deposed in this case on commission. One of five brothers who own Taluq fetching an income of Rs. 2500 per year.

Presided, so he says, over a meeting convened by Phani Babu in August 1921 to declare the Sadhu an impostor, and the proceedings intended to shew that there was some local opinion against the Sadhu (Ex. 224 series). Nobody else has deposed to this meeting.

(34) D. W. 365 Dr. Ashutosh Das Gupta, the doctor who went to Darjeeling with the 2nd Kumar.

(35) D. W. Abani Kanta Mukerjee, D. W. 46.

Exaggerates his age, seeing that he says he is as old as Tarinmoyee Debi who was born in 1300 (1893). He was thus 15 or so in 1909 ; talks of having some taluqs but gives a confused account of the same. Unemployed.

(36) Syed Ali Hossain, Member, Union Board. Little better than many ordinary tenants on the other side.

(37) Jai Kali Kahali, pleader, son-in-law of an employee of the estate.

(38) The 2nd Rani.

(39) The 3rd Rani.

(40) Gour Mazumder, a Calcutta man, of no position, says he had seen the Kumar in 1905, 1906 and 1908 in

Calcutta and in 1906 at Jaidebpur. In addition to these there are 13 witnesses on commission; these together with Mr. Meyer and Mrs. Meyer and Mr. J. N. Gupta are the 16 witnesses who were examined on commission and who spoke on identity.

Of these 53 witnesses I notice only the following, as the rest in my opinion are not such people that their bare denial could decide anything. This could be said of some of the witnesses examined on commission also, but as I have not seen them I should deal briefly with each of them. It must be understood that I am not considering now the evidence going to the features of the 2nd Kumar or such to topic as literacy etc. of the Kumar or the speech of the plff. or other things. For that I shall have to go into the evidence, as each of these topics occurs, including the evidence of the employees and even the ordinary tenants. I am now considering how far their denial of the identity is of any use to this court, how far it is the denial of people who remember the 2nd Kumar or who can be trusted to state their real opinion although they must remember him.

Instead of putting these into two classes, I shall mention those witnesses whose credit has not been questioned or whose credit I consider unimpeachable; whatever internal evidence of error or lapse of memory might appear; and it will be seen, of course, that a witness incompetent to testify to identity, though he did so, might give useful details about the Kumar or the plff.

(1) D.W. 1 Lt. Col. Pulley 48.

Examined quite early in the case as he was about to go to England, before the plff. had closed.

Retired from the Indian Army in 1919. Had come out to India in October 1904. Does not know Bengali.

He says he joined as A.D.C. to Sir Lancelot Hare in December 1908, and continued so till March 1912 when the Province ceased. He would pass the Dacca season, February 15 to April 15, with His Honour the Lt. Governor at Dacca. He says he came to know the Kumars very well in 1909, met them probably in the Government House in a social way, and in connection with the shoot of Lord Kitchener. Lord Kitchener was going to shoot at Jaidebpur, and before that, the witness met the 2nd Kumar some half a dozen times in connection with the shooting—the arrangement to be made. Captain Denning, the Staff Private Secretary, had to make the arrangements, and the witness had to keep in touch with them. The 2nd Kumar would speak to him in English, and each of the Kumars did so, and “from the way they talked I should have thought they had an English tutor, or had learnt English ‘in an English School’”. He thinks that the plff. is not the 2nd Kumar.

Every word of this account has been displaced by a few dates and the witness's own admissions. He says that he was appointed to act as A.D.C. for Lt. Pearce. The Assam Gazette (30th Dec. 1908) shows that Lt. Pearce was granted leave with effect from the 1st Feb. 1909, or on any other date on which he might be relieved, and the tour programme of His Honour, the Lieutenant Governor also published in the Gazette shews that Captain Pulley arrived at Dacca as one of his staff on the 12th Feb. 1909. On these notifications being shown, the witness admitted that he arrived on that date, and not before. That wipes out all his contact with the Kumars before that date.

Lord Kitchener came to Jaidebpur by special train from Naraingunge, and not from Dacca, on the 14th February. The Kumars returned from Calcutta on the

10th February (Vide Ex. 68 and the full discussion of the date above). There would thus remain a bare possibility of Col. Pulley meeting the Kumars and discussing the impending shoot on the day they arrived at Dacca (12th February or on the next day. Even that possibility is excluded by his statement that of the Kumars he saw the eldest Kumar first, and that, as he came out of a council sitting, in the middle of it, for purposes of nature, and inquired the way to the lavatory. Now Bara Kumar sat on the Legislative Council for the first time—there was welcome to him in the proceedings on the 22nd Feb. 1909. Col. Pulley, on this being shown, in the Gazette (E. B. Gazette March 1909) admitted what was obvious that he had put the first meeting back to a wrong date, i.e. had antedated it. The discussion with a view to the shoot goes off.

Now why was this gentleman who came to Dacca, a young officer of nineteen, on the 12th February, and who had not seen the Kumars at all before the 22nd and none, except the Bara Kumar, on that day, deposing to the shoot, to his meetings with the Kumars to discuss the arrangements, and so forth, to Lord Kitchener staying at Dacca for a week or so before he went to Jaidebpur, although Lord Kitchener had come, and gone, before he had come to know the Kumars at all? The reason is plain. He was told that certain things had taken place, and all in his time, and he took them for granted. He was told also for instance, as he admits, that the Kumars had an English tutor, and presumably also that they had an English accent, and he proceeded to say that from the way they talked English, he thought they had an English tutor, or had been taught in an English school—this in examination-in-chief and on the next day, he said that the 1st Kumar spoke better English than the other two,

that his English was indifferent and mispronounced, but intelligible; and asked whether he did not want to convey to the court on the previous day something different, he did not know what to say until Mr. Choudhury made a suggestion from his place in the Bar, and the witness grasped at it, and said he meant an English school out here in India. Asked whether by an English tutor he meant an Indian tutor teaching English, he admitted that he did not mean that, and ended by saying that he had been told that the Kumars had an English tutor and thought from that, and from the way they spoke they must have learnt it from that tutor, and stated, without recollection, or with contrary recollection, the kind of English they spoke. I do not think that this gentleman thought when he was speaking about the Lord Kitchener's shoot, or the discussion with the Kumars before it took place, or the English accent, that he was conveying untruths to court. He had been told things that would fit "a well educated, well polished aristocrat," and he, a plain English soldier, had the lofty unfitness of Englishmen to deal with low cunning. It is plain, and has been proved to demonstration, that he had not seen any of the Kumars before the 2nd February, that he saw only the 1st Kumar on that day, and though the possibility of his seeing the 2nd Kumar between the 22nd February and the 17th April when he set out for Darjeeling has not been excluded, he was obviously confusing him with the 3rd Kumar whom he certainly came to know—the 3rd Kumar died in 1913 or he would not say that the plff. resembles the 2nd Kumar in bulk—"both of them are somewhat bulky." It is agreed on all hands that the 2nd Kumar was well knit, fairly built, not bulky as the Chhoto Kumar was and Mr. Choudhury, in his opening made this bulk of the plff. a point of distinction.

This witness, supposing he had seen the 2nd Kumar in 1909 after the 2nd February, saw the plff. in 1934 at court; and looking to his evidence, he is incompetent to speak on the identity. It is fairly obvious that like the other things, he had been told that he was an imposter, for the plff. and to speak to his identity that his evidence was going to be against the plff.

(2) D.W. J. N. Gupta, I.C.S., Retd. (on commission).

In the summer of 1908 arrived at Dacca on special duty, and when about 15 days at this station, was taken to Jaidehpur by Mr. Altap Ali for a shoot. Went to shoot on elephants, accompanied by all the three Kumars, had some luck and some good time. That was the whole of his acquaintance with the Kumars. He saw the plff. 26 years after, in 1925, with an introduction from Justice Dwarak Chakrabourty, exchanged a few words with him, found he could not talk Bengali or talked it with Hindi twang and decided in a minute or two—that was the whole time the interview lasted—that the man was an imposter. The matter was not before him officially, so he says, so that he did not care to have adequate materials for his opinion. That is his evidence. It will be considered on the point of the plff's. speech, but as a witness to identity he is useless. The witness admits that the plff. bore a general resemblance to the 2nd Kumar—the only witness who admitted that, knowingly, but he looked coarser. That is, coarser than the young man of 24 he had seen in the shoot in 1908. It might even be presumed that as member of the Board of Revenue he had seen the evidence that had been collected and sent to the Board before 1925 to show that the Kumar was dead, apart from the notoriety of the death.

(3) Mr. K. C. De, I.C.S. Retd.

He was Member of Board of Revenue which is the Court of Wards from 1923 to 21-12-28, with short gaps.

He was posted at Dacca from December 1905 to March or April 1911—as Registrar, Co-operative Societies, Bengal and his Head-quarters were with Government at Shillong or Dacca. The Dacca season was from the middle of November to the middle of April, as Col. Pulley told us.

He saw the Kumar once in January 1906 at the Dacca Railway Station where all the notabilities had collected to receive Sir Bamfylde Fuller, the Lt. Governor, and once again, at a garden party at Government House in the same month, or next month. On the either occasion he met the three Kumars, and on either occasion, he says he spoke to them, and in English. On the latter occasion, they were walking, as people do, in garden parties. Then he adds that on later occasions he must have met the Kumars in various social and official functions, but can not recollect any particular occasion.

He says he saw the Sadhu on many occasions, first at Calcutta in 1924 when the Sadhu was presented to him by the Rajah of Hetampur, and later, at functions at Calcutta, and on the road at Calcutta, and last of all, in 1926 or 1927 when a certain admission is said to have been made by the plff. He suggested that the plff. if he wanted an inquiry or anything, ought to put in a petition, and it was this petition which was presented on 8-12-26 and which he heard and refused on 14-2-27 the ground that an inquiry was not within the power of the Board, nor could it lead to result that could bind anybody.

The witness was presumably well posted in the evidence collected to prove his death, and to prove that he was a Punjabi, looking to the petition he dealt with, to the report of the commissioner it mentions, and to his evidence in this court.

I shall mention the alleged interview with the plff. in August 1926 at Dacca under the admissions said to have been made by the plff. but I must deal with it briefly, as it will have a bearing on the value of his evidence on the identity. He says the plff. saw him in August 1926 or 1927 at Dacca. He says that the plff. came accompanied by a pleader. He says that very likely the interview was granted in response to a letter from Jyotirmoyee Debi. His letter to Jyotormoyee Debi quoted above (Ex. 200) was shown to him—it is dated 7-8-23, and seeing that, he said that this was the interview he meant. The latter asked that Jyotirmoyee Debi should send her son in law instead of coming herself to the Circuit House, and the son-in-law Chandra Sekhar Babu went, as Chandra Sekhar Babu had deposed long before, and it was at this interview that Mr. De suggested a petition for an inquiry, not by Ram, or Shyam, but by the plff. himself. Mr. De admitted all this, and added that on this occasion the plff. also came, and said again that the son in law and the pleader came, and again, that the plff. came with a pleader in 1926, and asked what he wanted said: Ham Fakir Admi, rupia leke kea karega (I am a Fakir what shall I do with money) He, Mr. De, suggested a petition advised him to put in a petition for whatever he wanted he did not collect what was wanted—and the reason why he suggested a petition was that the plff. might back out. He says that at this interview of 1926 the plff. was in a gerua alkhilla, and wearing long hair. It is plain that this interview of 1926 was not a fact. He is confusing it with the interview of 1923 when the son-in-law of Jyotirmoyee Debi saw him at the Circuit House by appointment, and mixing it up with the Sadhu he had seen in Calcutta for the first time as he says, in 1924, and then unaware of the date of the 1923 letter tried, when

confronted with it, to reconcile it with the interview with the plff. at Dacca by saying things which nobody could understand, and then eventually fixed upon 1926 as the year of the interview where the plff. said he was a Fakir, as he had not seen him at all before he was in Calcutta in 1924, but came into conflict with the fact that the plff. was in Calcutta in 1926, that he had been dressing as a Babu from 1921, that he had cropped his hair short in 1925, that he had been seeing Mr. Lindsay, J. N. Gupta, and the witness himself in Calcutta with a view to get an inquiry into his matter; that when, in accordance with the advice which he had admittedly given to Chandra Sekhar Babu in August 1923, a petition, after a great deal of conflicting advice, was presented to Mr. De. Mr. De who says he was convinced from the beginning—from the time he saw him at Calcutta in 1924—that the plff. was an imposter, a conviction which he says was confirmed by the interview of 1926—but suggested the petition for an inquiry, lest he should back out, i.e. to pin him down to a case, and to a signature, but heard the petition for a day—a whole day, and then decided that the inquiry would be useless. There was nothing to prevent him from rejecting the petition on the short ground that he believed the man was an imposter from his personal knowledge. I think Mr. De was not doing justice to himself. He suggested the petition in 1923 as he himself admits, when he had not seen the plff. at all, as he also admits—he saw him first in 1924 and in Calcutta—and there was a second interview, and a second suggestion in 1926, which on the facts was impossible. Memory played him a strange trick this mixing the Sadhu with the 1923 interview, and then placing it in 1926, and at Dacca, and then clothing him in gerua, and putting on him the 'jata', things associated with a Sadhu, although it is agreed on all hands that the

plff. was going about as Babu, dressed as Bengali before he left for Calcutta in 1924, and had talked Bengali with Mr. Chunder in 1924 whatever the tone, or the kind of Bengali it was. I believe that in this account took something of persuading oneself to believe what one had been told such as occurred in Col. Pulley's case had occurred.

What was really left in his mind after seeing the plff. and reading the evidence secretly collected about him, appears in this :—

"The plff. is not the 2nd Kumar in my opinion," says he in examination in chief.

Q.—Why not? (still in examination in chief).

A.—Because the 2nd Kumar is dead.

Q.—Is there any resemblance between the 2nd Kumar of Bhowal and the plff?

A.—Both are fair, both have blue eyes, but the San-yasi is of gross appearance, ill-bred manners, appeared to be the son of peasant, not of a Rajah.

In cross examination he was asked :

Q.—Do you take up the attitude that whoever has deposed to the identity of the plff. with Kumar is necessarily dishonest?

A.—Certainly not. I may be mistaken. Mr. Ghosal may be mistaken. That was Mr. De's mind when he sat hearing the petition for an inquiry. On the identity, his evidence is of no use to the court, though I shall have to go into it for other points such as the 2nd Kumar's literacy. He admits that the coarseness he speaks of—this looking like a Jat cultivator, instead of a "Rajah's son"—a standard often mentioned in this case might have been influenced by the Punjab report about the plff. What this Punjab report was would appear below.

(4) Mr. Meyer (Commission).

Mr. Meyer was the Manager of the estate as a private servant of Rani Bilasmani from Nov. 1902 to a date in October 1904 when he was dismissed for intriguing against his employer, and sending up a report to the Collector, a portion of which I already quoted. A full account of the transaction, then given above—the taking of possession by the Court of Wards in 1904, how Mr. Meyer, although it was no business of his, went on the occasion to gloat over the Rani's fall, how she was given ten minutes' time to quit. I should have thought that at this distance of time no bitterness would be left in Mr. Meyer, but there is trace of such bitterness in his evidence and what is more to be regretted is that he does not admit one material fact touching the transaction, although Mr. Rankin's account shows clearly that in this quarrel with the Rani, the 1st Kumar and Mr. Meyer were on one side, and the other two Kumars and the Rani were on the other. Mr. Meyer had to admit after a great deal of trouble that these latter "threw a great deal of mud with the hope that some might stick, and it is perfectly clear that after the said affair, Mr. Meyer's name was an anathema in the family. Satya Babu in his diary (Ex. 399 series) mentions how in 1909 some body had spread the tale that Mr. Needham who was coming as Manager was a connection of Mr. Meyer, and it filled the family with dread. Now this Mr. Meyer, baulked of his designs by the Rani and the 2nd Kumar in 1904, is not likely to cherish tender feelings towards him, but it is not necessary to look into his feelings, for when he said that he had seen the Sadhu on the Buckland Bund, and very closely as he had been told that he was calling himself the 2nd Kumar, and was satisfied he was an imposter, when he said this, he was not telling the truth, for on 14th Dec.

1922, nearly 19 months after, Mr. Meyer giving evidence in the court of a Subordinate Judge at Dacca deposed as follows :—

(Ex. 290).

“I knew the 2nd Kumar of Bhowal.

Q.—Have you see the Sadhu who has come here, and about whom it is said that he is the 2nd Kumar?

A.—Yes. I have seen the man.

Q.—I have seen the Sadhu on the road, and as far as I have seen him, I can not give a definite opinion as to whether he is the 2nd Kumar or not; but my impression is that he is not the 2nd Kumar. But if I can see him as I am seeing the Govt. pleader, and the presiding judge of this court, for 5 minutes, and can hold conversation with him, then I can give a definite opinion. Since the Sadhu came to Dacca he never came to see me.

I have no doubt whatever that Mr. Meyer knew the 2nd Kumar and ought to be able to say whether the plff. is or is not the 2nd Kumar, if he could see him as he was seeing the judge and speak to him for five minutes. He never did so, and his evidence on identity, now so downright, is not really his real opinion and goes for nothing. He would not admit the above deposition, as it was a copy, and talked of other opportunities of seeing him after the above deposition, talks of them vaguely although the plff. was going about or driving about at Dacca during 1921 and 1922.

(5) Mrs. Meyer (commission).

She certainly saw the 2nd Kumar at Jaidebpur when Mr. Meyer was there, but she left for England during his stay, and never came back to Jaidebpur. She left in 1904.

She says that the Sadhu is not the 2nd Kumar. She had seen him at the Buckland Bund, just a Sadhu, without any thought of the 2nd Kumar, and later, in the streets walking or driving. She noticed him clearly when he was on the Bund, and that because she had never been so near a Sadhu before. Mr. Meyer had a different reason.

On the Bund nobody had recognised him as the 2nd Kumar nor afterwards, until his body was clear of ashes, and the idea that he might be the 2nd Kumar had become a serious idea, and not a mere suspicion or possibility which nobody takes seriously. This lady, from what recollections one would expect her to retain of him, was not likely to think of an ash-besmeared Sanyasi as the 2nd Kumar, if she had really seen him without a thought of the 2nd Kumar, and seeing him in the streets even with that thought, would not go a great way with this lady, supposing the plff. be the Kumar. She had also been told things which she gave as her recollection, apparently to suit a case then in somebody's mind. She says, for instance, that while she was at Jaidebpur she saw Mr. Wharton there, as the tutor of the Kumar although Mr. Wharton had left at the end of July 1902 (Ex. 4) but Mr. Wharton's resignation letter had not then been put in. And she goes on to say that the three Kumars talked good English, though the defdts. who would need the very best English to save the cross examination of the plff. were striving to prove the barest smattering, as will appear below.

(6) D.W. 280 Alta Debi, also called Sukumari.

She is a daughter of Ramanarayan Mukherjee, the maternal uncle of the 2nd Rani. It is at her father's house that the mother of the 2nd Rani and her children lived latterly, and found a home.

Sukumari Debi was married in Falgun 1313, but says that she did not go to her husband's for about 2 years.

She was born in Kartick 1300, so that she says correctly that she saw the 2nd Kumar first when she was about nine. She saw him about a dozen times before her fifteenth year. She saw the plff. first while he was living at Bose Park, a house adjoining hers on the back. She would look at the man, as he stood at a window, from her bedroom—there is nothing in that, one may be as curious about an imposter as about the real man—but when she was being examined before me, the plff. stood before her, and the witness had a long and good look at him, and was asked in examination in chief :

Q.—Is he the 2nd Kumar?

A.—I see no resemblance in the face.

She was looking on until this question was asked; and I do not think that she was waiting for the question, and that is why she did not instantly declare; “Why, the man is utterly different.” In any case what was happening in her mind is plain from what she said in cross examination.

Q.—I put it to you that the utmost that you can say that the plff. may or may not be the 2nd Kumar?

Pause

Q.—You can’t say he is not the 2nd Kumar nor can you say he is—that is the utmost you can say?

Pause

A.—How could the nose become so broad? Everything of the face may change, but could nose change? Then there was a little interference by a pleader for the defdts. who said : the witness had said : the nose and eyes could not change. This was told in the hearing of the witness, and the witness said, on my inquiry, that she had said. Could nose and eyes change? That is a general

proposition to support her point: How could the nose become so broad? This was either doubt, or seizing upon something to quiet an uneasy conscience. If she had known the Kumar longer than she did, I would not call it doubt; but the other thing, but as it is, she is useless on a question of identity.

The following witnesses under this head certainly knew the Kumar, but their bare negative can not outweigh the evidence on the other side :

(7) Shyama Das Banerjee 48 (on commission) Son of a cousin of the Satya Babu's mother. Lives at Uttarpara. Was at Darjeeling during the illness and the disputed death of the 2nd Kumar. An important witness on this topic. Dismissed from Govt. service for defalcation. Talks of a lot of income, but pays no income tax.

(8) Jagadish Chaudhury, pleader, Presidency Small Cause Court, belongs to Dhirasram, a village close to Jaidebpur. Educated at Jaidebpur school, and lived in the school boarding, free student, and free boarder. The 2nd Kumar helped him with money for his books and boarding expenses. He was about 13 when the 2nd Kumar went to Darjeeling.

Was a supporter of the Sadhu till September 1921. Wrote in the papers that he was a staunch supporter of the Sadhu. Was a member of the Samiti that was raising funds for the sadhu. Left his party, so he says, in disgust. On his evidence he was an accomplice, and his former statement and conduct are in conflict with his present opinion, if that be his opinion.

(9) Durga Prosad Biswas (on commission) 78.

Was a Peshkar or Manager of Pubail Zemindar and retired on a pension of Rs. 17 Ordinary circumstances.

Went to the plff.'s house to see him. Went again by accident not to see him. Went again two days to sing Kirtan. The plff. had then his beard, and long hair, so that it must have been in 1921, and before Bhadra, and yet threw in Satyabhama Debi as present on the day he first saw the plff.—it was at Dacca. Satyabhama Debi did not come to Dacca until 1922.

(10) Shib Chandra Mitra Biswas (on commission) 70.

A small Taluqdar of Brahmangaon. Does not remember if he kept grocer's shop. Does not remember if he was fined in a criminal case—had admitted it in a former case.

(11) Sarba Mohan Chakraborty : Was the Mukhtear of the Estate for 40 years. Age 80.

A Taluqdar. Income from taluq Rs. 1000 to Rs. 1200. Asked whether he signed any petition to Govt. admitting that the plff. was the Kumar says that he does not remember. Talks of seeing the Sadhu without 'jata' but with a beard at Jaidebpur upon his arrival.

(12) Romanath Roy (on commission), 83. A big Taluqdar, Rent Roll Rs. 7000, besides other lands. Was arrested two months before his deposition for debt due to Bhowal Estate. Bhowal was trying to enter upon a part of his jote, and this dispute was pending. Must have seen the Kumars, but knows little of them or the family, can not say when he saw the 2nd Kumar last, adds that when he saw him last before he went to Darjeeling, the Kumar was then ill. The Kumar was then shooting tigers or doing that sort of thing. His Bengali words do not suggest syphilis, or anything chronic.

(13) David Manuk (on commission).

Was an employee of Bhowal from 1906 to 1910. Now in straitened circumstances, looking to his evidence.

(14) Saibalini Debi, (on commission) Sister of Phani Babu. Her evidence will be discussed below.

(15) Dr. Jatindra Mohan Sen, a friend of Phani Babu, a Sub-Asst. Surgeon posted at Chittagong, a distant relation of Ashu Doctor.

(16) Anthony Morel, 64, unemployed. Went with the 2nd Kumar to Darjeeling. Was in the service of the Bhowal Estate until after 2nd Kumar's death. An inhabitant of Bhowal, and an Indian, though the origin he says is Goanese. His evidence will be discussed below.

(17) Rajendra Sett of Bali, District Hughly, Honorary Magistrate, formerly President Municipal Committee of Bali, apparently a man of some position.

A friend of Satyen Babu, and was at Darjeeling during the 2nd Kumar's visit. An important witness on the Darjeeling affair. As to his competence to speak to the identity, the plff. in his Memorial to the Board refers to him as one of the persons who recognised him and calls him pompously, a friend. On his own account he had seen the 2nd Kumar in life about thrice, at the Stepside where the 2nd Kumar was staying, and went to cremate him on the morning of the 9th May.

His evidence on this point, and certain points going to the bodily features of the 2nd Kumar and his dress will be considered in its proper place, but on his own account he saw the plff. when he was staying in Calcutta. He was not examined by the defdts. on the identity at all, but in cross examination, so that the defdts. do not rely on him on this point.

I may as well state here that he says on the point of identity. He went to see the plff. out of curiosity, with a son of Mr. Dwarik Chakraborty. His account briefly put is this :

"As I entered I was surprised to meet a person who had red hair, and kata eyes, like the Kumar. I asked : 'Is he the Kumar? Somebody said : No, he is the nephew. Then the man whom I have gone to see came. He asked :

"Ki, keman chinte paren?" (Well, do you know me?) I said : No, how can I?

Then the plff. said : Ask me some thing to remove your doubt. I asked : What sort of cap Satyen would usually put on at Darjeeling?

"He said : Wait", went upstairs, came back with a cap wrapped in a news paper. It was an expensive cap, gold-embroidered. I was surprised as Satyendra used to go about in that sort of topee, like a gorkha cap, and in English dress. The plff. said : 'It is our family topee. Satyen would use that'.

Another question I asked : "How would you dress ordinarily in the Stepaside?"

He said : "A silk cloth wrapped round the waist, and a coloured jama (upper garment) like a sleeping suit."

"The answer was correct enough—the kind of dress I had seen the 2nd Kumar in, and as that looked correct, I asked : "But you used to put on a lungi, not a cloth?" He said : "I would put on cloth like a lungi."

The witness says that long after this interview he narrated this conversation to Satya Babu, and Satya Babu said : "Yes, he would put on clothes like that, but who did not know it? He laughed out the whole thing."

Asked whether he saw any resemblance between the 2nd Kumar and the plff., he says that seeing the nephew some similarity occurred to him, but none on seeing the plff.

Apart from what occurs in the above account, the witness had stated that when he met the 2nd Kumar at Darjeeling he found him in a coloured lungi—like cloth, and a coloured jama and he wondered, as it was Darjeeling, and the witness had been advised to put on warm clothes.

I am not considering now how far his conversation is memory in the plff. or fictitious, but two facts emerging from his evidence must be borne in mind: that the 2nd Kumar would be in coloured lungi at Darjeeling, and according to Satya Babu, everybody knew it; that Satya Babu used to go about in English clothes with the Kumar's gold-embroidered cap on his head. Satya Babu, apparently because of the evidence did not deny it. No ordinary grown up man puts on a topee of that kind it is an exhibit—unless he is a Rajah, or Kumar, or somebody of a rank that puts him above conventions and ridicule. It will appear below how far this young man, about the same age as the Kumar, going about at Darjeeling in English clothes, and the gold-embroidered cap, and talking English, as Mr. Sett also says, is responsible for the Darjeeling witnesses who say they saw the Kumar on the road, and in hotels speaking decent English of which the 2nd Kumar, on their own evidence, was incapable; and it will appear below that he could not talk English at all, decent or otherwise.

Another valuable thing in this evidence is the language and the manner of this conversation with the plff. There is no suggestion of Hindi at all, and portions of it are peculiarly Bengali. For instance, ki, keman chinte paren? Witnesses will be coming to say that the plff. could not speak Bengali at all in Calcutta, or nothing but Hindi with a little Bengali mixed, and the case put to

Mr. Ghosal (on commission) was that in Calcutta the plff. when he met Mr. Ghosal in 1924 and 1925 could not talk Bengali at all, though Mr. Ghosal, a gentle man of the highest position and family in Calcutta, swore that the plff. had conversation with him in Bengali. This topic however is large and of unusual interest, and must be dealt with in its proper place.

Mr. R. N. Sett had seen the 2nd Kumar took casually at least 15 years before he had seen the plff. to be a useful witness on the question of identity, nor is he relied upon by the other side as such a witness.

(18) Mr. S. P. Ghosh, Deputy Magistrate (now a District Magistrate).

He is a son of Rai Kali Prosonna Ghosh Bahadur the old Manager of the Estate from the time of Rajah Kalinarayan Ray, till about September 1901, Rai Bahadur had a house at Dacca, but would live ordinarily at Jaidebpur.

He was there when the Kumars were born, and knew them as well as his own sons; and there is no doubt that this witness, Mr. Ghosh, knew the Kumars as well as his own brothers.

This gentleman says that he saw the plff. a little after his arrival at Dacca, at the house of Ananda Babu. He went there with his brother, Rai Satya Prosonna Ghosh Bahadur, Public Prosecutor of Dacca, and Mr. Khagenendra Mitra, another pleader of Dacca. They sat on a bench awaiting the arrival of the plff. The plff. came at dusk with a lot of people, and sat close to the witness. Asked if he knew them he said: "Malum nehi" (Don't know). The witness said there and then that the appearance did not tally at all. Dhiren Babu, a son of Babu Ananda.

Chandra Roy, aforesaid was there at the time and the witness, although he speaks of other questions put by his elder brother, among others, does not mention what question and he came away under the impression that the man was an impostor.

The witness's father was dismissed by the Rani Bilasmani in 1901, was sued for accounts, was deprived of the pension which the will of the Rajah had provided for him. The suit was for an account, ended in a decree for Rs. 50,000, but this was remitted by the Kumars, or rather by the Rani, at the request of her sons contained in an admitted letter written in 1905 (Ex. 2). It is this family that did acts connected with the steps taken to withdraw the insurance money of the 2nd Kumar, and as the diary of the Satya Babu and the letters of Mr. Needham make it impossible now to say that the steps were taken by the estate, and not in opposition to it, those acts of the Ghosh family were for Satya Babu who was against the two surviving Kumars. It therefore looks as if in the strife that began then, the Ghosh had taken the side of the 2nd Rani, a thing they were not likely to do if their feelings towards the other two Kumars, whatever the terms outwardly were, were not unfriendly. It is also a fact that Mr. Ghosh who became a Deputy Magistrate in August 1906, and who was posted at Dacca from 1907 to 1916, and again from 1920 to 1925 was in charge of the Court of Wards Dept. from 1923 to 1925, and had access to the confidential papers touching the Sadhu, and had in 1922 heard the Defamation case above referred to, the case in which the question of the identity of the Sadhu was raised, as also the circumstances of his illness and alleged death. Now the witness who is a Dacca man, and so bound up with all matters connected with the Sadhu,

says that he never heard that he was at the Buckland Bund, or that he was at Jatirmoyee Debi's house at Dacca, although his own house at Dacca was quite close, (unless he had seen the Sadhu when he was living at Buckland Bund in which case he had seen him before the Atmoparichay when he had not declared his identity at all) that the plff. had been accepted by only a small group of partisans, all the facts, and the Ex. 59 and Mr. Lindsay's letter written in 1921 (Ex. 435) notwithstanding, and lastly, he says that there was no resemblance in the appearance at all. All this may be perfectly consistent with an honest opinion, expressed after seeing the plff. particularly if he could not recognise him, or talked Hindi, but the witness says that he saw the plff. in a winter probably, that it was before the Impostor notice, and that he did not know where he came from, so that if he was coming from Buckland Bund he was not then admitting that he was the Kumar. In view of this obscurity, I should have thought that his elder brother, Rai Bahadur Satyendra P. Ghosh who knew the Kumar quite as well as Mr. Ghosh would be called, or at least Khagen Babu would be called. It looks therefore as though the point of time was before the declaration of identity, and unless left obscure, would go against the case that the plff. was not being suspected as the 2nd Kumar even when he was on the Buckland Bund.

In spite of all this, the evidence of this gentleman remains the evidence of an independent competent to speak on the identity in direct conflict with the evidence on the other side of many equally independent men of position.

Mr. Rankin, I.C.S. Retd. 63 (D.W. 2).

Mr. Rankin came all the way from England to depose.

in this case, and I heard with deep regret that he died soon after his deposition, as the result of a chronic disease.

He retired in 1892. Was Magistrate and Collector of Dacca from February or March 1899 to a date in 1905. On 27-7-05 took place his farewell party at Northbrook Hall which was attended by the 2nd Kumar. From the end of 1905 to 1910 he was Secretary, Board of Revenue, and moved with the Government, Shillong in summer, Dacca in winter.

The credit of this witness has not been questioned but his recollection. He says that as Collector he had seen the Rajah, and also his sons during the Rajah's life-time, but after his death, he saw them more frequently at Dacca as well as at Jaidebpur: at his house when the Kumars paid formal calls, at functions at the races, and at Jaidebpur where he would put up at the "Guest House" and go out for a shoot, or a ride, and the 2nd Kumar would go with him. Some difference must have occurred after he ceased to be the Collector, seeing that as Secretary he would have no official touch with the family, or its affairs, and would be at Dacca only in winter when the Kumars would generally be in Calcutta and seeing also that Mr. Meyer who, he says, was his friend left Jaidebpur in 1904, and the family was at Calcutta so long as the first Court of Wards was in possession, and then the Managers who followed were Indians whom Mr. Rankin could not meet on equal terms, or with whom he could not put up as he could with Mr. Meyer who lived in the house called the Bara Dalan which Mr. Rankin referred to as the guest house. Mr. Rankin, and I dare say, every European referred to the house as the guest house but that was not the name of the building which was called Bara Dalan, as every witness, except one or two who had to prove a certain point, said.

There is no doubt whatever and it is not disputed that Mr. Rankin knew the Kumars, and their home, and everything about them as collector, particularly as it was he who went with the Police to take possession of the Estate on behalf of the Court of Wards. I have fully described that incident. The plff. suggests that since that incident, and what they conceived to be an insult to their mother asking her to clear out in ten minutes, though it was a surprise visit, the 2nd and 3rd Kumars rather avoided Mr. Rankin, but that he knew them and they him, rather the more because of this reason is plain.

Mr. Rankin must have seen the 2nd Kumar last in 1907 seeing that the Kumars were away in the winter of 1909 until the 10th February, 1909, but it is not impossible that he had seen him in 1909 also, before he has left in the beginning of December, or may be after his return.

Mr. Rankin saw the plff. in court nearly 26 years after, including the years of his retirement in England which meant loss of touch with India, and the fading of its memories Mr. Rankin never mixed with the 2nd Kumar, 14 years his junior in a social way. He would pay formal calls at his house at Dacca, generally with the eldest Kumar—plff. says always and there would be somebody with him, possibly to help in his English, as Mr. Rankin says. At Jaidebpur too one would expect that the meetings were less formal, but Mr. Rankin would always see him in English dress which imply considerable limitations.

Asked in court 26 years after, whether the plff. who stood facing him was the Kumar. Rankin says: "I do not think so." He does not look to me to resemble the 2nd Kumar".

In cross examination Mr. Rankin was told that lots of people had sworn to the identity of the plff. and asked.

"Do you say that the evidence is necessarily false since you have seen the plff.?"

A.—I do not think I can say whether anybody who gave an opinion resemblance gave false evidence.

Again: "If a person said he might be looking like the 2nd Kumar he might be telling the truth for ought I know."

As might have been expected Mr. Rankin is not in a position to give a definite opinion on identity, although he had been shown some photos of the 2nd Kumar before he came to depose, including the XL, in which the 2nd Kumar was 14, and which the Rani could not recognise, and which it was apparently thought Mr. Rankin, seeing that he had seen the Kumar before his father's death ought to recognise in court. D.W. 120 Saradindu Mukherjee, a respectable gentleman of Calcutta, 47. Saw the 2nd Kumar in 1901 when he was on a 4 or 5 days' visit to Jaidebpur. The witness was then 13. Did not see him again except in Calcutta, and in a carriage. Saw the plff. in 1925 in Calcutta. Thought him a Hindusthani, as he spoke Hindi with a mixture of Bengali. This last point in his evidence will be considered when I come to the topic as to whether the plff. is a Hindusthani but as a witness to identity he is useless.

Atul Prosad Roy Choudhury, (commission) 43. Referred to above in connection with the plff's journey to Kasimpur and to Jaidebpur. Ran away and left jurisdiction to make his evidence admissible at the close of the case, after sending his gomasta to say that he was ill. Had

denied he had taken the plff. to Kasimpur himself, or to Jaidebpur, talked of the peculiarly difficult Hindi which the plff. was speaking, which at one part of the trial went with complete dissimilarity. Said the plff. gave his name as Sunder Das to him during his visit to Jaidebpur, although this name occurred for the first time in the Punjab report of the 27th June. Many other points in his evidence will be mentioned below, and those discredit him altogether.

Besides the two Ranis and Satya Babu these are all the witnesses not counting the Naibs and other employees under order to see that nobody deposes for the plff. and the tenants who were sent under escort by the naibs to repeat the "sample evidence" of Rai Saheb. There is not a relation, except Phani Babu and her sister, and her son-in-law who is a servant of the estate. There is not a single witness from Uttarpara from among the 2nd Rani's own people except a cousin who had seen the Kumar last when, she was barely fifteen, and whose denial of the plff. went perilously near admission and a man dismissed from Govt. service for defalcation. Her two other maternal aunts, the widow of Surya and Ram Babus are living. There is not a single independent disinterested man of position who knew the Kumar, still remembers him, and could not mistake him, except Mr. S. P. Ghosh whose independence is beyond question, but in whom some bias from the facts I mentioned is arguable. On the other side, is the evidence of the sister, the honesty of her belief resting not on her testimony alone, but on the situation that arose on the 4th and 5th May indicated by the report of Mr. Needham and fully disclosed by the evidence, and on the belief of Rai Saheb himself in that honesty, and consequently in the identity of the man until the situation

changed on the 6th May; and it confirms, and is itself confirmed, by the conduct of numerous people and the sworn testimony of a large number of independent men and women, including the Rani's own cousin and aunt, whose evidence discloses internally no mark of untruth, against whose credit nothing can be said, and who could not possibly mistake the Kumar. It is impossible for me to say that all this is explicable not by recognition, but by self-deception by belief, without recognition, or an erroneous inference of identity. Everybody is not a sister. There is, of course, the denial of the identity by the witnesses on the other side, and there is the denial by the Rani, and her brother. The denial by the Rani and the apparent and reputed death requires the closest scrutiny into this case, and nothing short of proof to demonstration will be insisted upon, and the decision need not, as I said before, rest upon the credibility of witnesses alone, nor need this credibility depend upon their means and position alone, but upon whether it stands scrutiny, so far as it touches the points of distinction or agreement in mind or body urged by the defdts. or the plff. If the evidence in support of identity stands this scrutiny if it is confirmed by facts such as the marks on the plff. which, in their collection, can never occur in a second individual if the death is displaced, the denial by the Rani, or her brother, will not stand in the plff's way, even if to Satya Babu who is enjoying the property, the return of the true Kumar would not be a calamity. The Rani, so far as her brother is concerned has no will of her own, though doubtless cherished as a goose that lays the golden eggs; and she would feel the return of the Kumar not the less of calamity, looking to the kind of married life she had, to the life she had got used to, and to the charge of poisoning against her brother telegraphed to him in May 1921 which will

make her feel that she was going to be put into the same category, although nobody has done so or regarded more as the sister of her brother than as the wife of the Kumar.

Opinion expressed by conduct.

Satyabhama Devi.

It has not been denied that Satyabhama Debi was living in house of Jyotirmoyee Debi at the time the plff. paid his first visit to Jaidebpur, and also during his second visit till it ended on the 7th June. She was present on the day of the Atma-parichay on the 4th May. This is the evidence of Jyotirmoyee Debi. She says that after she came to occupy her own hali at Chakkor in April 1914 Satyabhama Debi, upon her return from Benares where she had gone with Kripamoyee Debi would generally live in her house. (Vide full narrative above) Rai Saheb who was living in the Rajbari with his family does not deny that in 1921 during the material period. She was living in this house; and Phani Babu found her in this house during the first visit of the plff. and also during the second.

The evidence of Jyotirmoyee Debi, and the nephews, and certain other witnesses is that this old lady recognised the plff. as her grandson, strove to keep him at Jaidebpur by staying on after he left for Dacca upon the publication of the Imposter Notice on the 3rd June, so as to make her desire to stay with him a case for the official permission to the plff. to stay at Jaidebpur. Omitting her statements, I would mention only her conduct. She was calling the plff. Koka, (slept in the same room with him and Jyotirmoyee Debi D.W. 937 and Jyoti), wrote to him on the day following his departure for Dacca, (Ex. 54) wrote to the 2nd Rani in July 1922, wrote to Mr. Drummond to send Mrs. Drummond to come and see her, joined in the

petition for inquiry, called for but not produced, though admitted, would ask the plff. to do her mukhagni when she died (P. 937), acted, on the day before her death, the Rajah and Rani with the plff. as grand-mothers playfully do) (P. 937 and 937). If this were not substantially true, the other side would not say, and lead evidence to show that she was blind, and was not in possession of her faculties, and that this was being said then appears from the fact that she had her eyes examined by Lt. Col. Mackelvie and Civil Surgeon of Dacca, now dead, whose certificate Ex. 74—dated 20-7-22 shows that her vision for a woman of her age was good, and that she could count test-dots, and recognise faces. There is something childish in this contention about her sight, as though a grand-mother needs keen eye sight, or any sight to know the grandson, supposing he had returned after 12 years. What is less childish, is that she did not change her will which she had made in 1913 on the footing that the 2nd Kumar was dead, though there is evidence that she had wanted to change it, died unexpectedly and suddenly (P.W. 4 and P.W. 852); and the suggestion that she was under the influence of Jyotirmoyee Debi. The undisputable conduct of hers however is that she left Jaidebpur, her husband's home, to come to live in a small house at Dacca because the plff. was there, and took the risk of death away from home, and what, if she did not believe in the plff. must have appeared to a lady of her piety, a risk to her soul and caste; and as to the influence of Jyotirmoyee, I have found that she was not a designing woman, but believed that the plff. was her brother. Looking to the certificate of the Civil Surgeon and the evidence I do not believe that she was in her dotage (P.W. 34, 12, 18, 20, 33, 608, 937, 938, 37, 87, 847, 358, 608) or she would not ask that Mrs. Drumond should come and see her. Looking to her

rank, there was nothing preposterous in that request of Tarinimoyee Debi, the sister.

Quite early in the case the learned Counsel for the defdts. began to suggest that she Tarinmoyee did not recognise, or accept the plff. and that her husband Brojo Babu, issued a notice that the plff. was an impostor. (p. w. 4, 5, 438). Neither party has however called her, and the learned Counsel did not refer to her or her husband in his argument. Any statement made by these out of court goes for nothing, but the suggestion that this sister had repudiated the plff. was a strange suggestion seeing that the pleading of the defdt. no. 4 is that the plff. had been set up by the sisters. In Ex. 371 this lady, the defdt. no. 4, is blaming the sisters for the Sadhu. Mr. Chaudhuri also overlooked that there was on record not only this letter, and this pleading, but a letter of Mr. Lindsay dated 9. 8. 21 in which he writes: "It must be remembered that the sisters of the late 2nd. Kumar and Babu Ananda Chandra Roy have openly espoused the cause of the Sadhu" (Ex. 435). She had gone to the cremation of Satyabhama by the plff. I accept the evidence that she had gone to the Sradh performed by the plff. She got into the photo (Ex. IV) (p.w. 2, 3; 4, 5, 35, 64 and 23 and many others). She had joined in the petition for an inquiry, a fact not disputed. In May 1921 when she went to Jaidebpur and saw the plff. she wept, and was seen lying with her head on his thigh (vide evidence in the narrative going to that point above). When the plff. was at Dacca she would call, and eat the remains from his patter (P.W. 660, 977). She would ask him to dinner, and call him to Bhaiphonta and Bhaichhatu—the two ceremonious receptions of a brother by a sister in vogue in these parts (660 P.W. 977). Nor need this rest upon the testimony of Jyotirmoyee Debi alone. Tarin-

moyee Debi was seen going to a marriage at the house of one Saroda Ganguli at Dacca in a closed hackney carriage with the plff. alone (P.W. 1004, see also P.W. 1005, 913). After the death of Satyabhama Debi the defdt. no. 3, the adopted son, held, as a great grandson, a 3rd. day Sradh, and three of the gentlemen invited to a feast on that occasion saw Tarinmoyee Debi standing on the roof of her house with the plff. by her side watching the ceremony (P.W. 1004, 1008, both pleaders of this court). It was idle to suggest that this lady was repudiating the plff. despite the pleading. She could not depose as her husband had brought the suit in 1925 to set aside the adoption, the suit was nominally by his son as reversioner—and I need not speculate why he did so, whether because he thought that the plff. would never have the means to sue, or because he had little chance of any benefit from his success, supposing it ever came, seeing that he was never much in touch with the family, had tried to propound a will of Bara Kumar, and some indications of his terms with the Kumar would appear from an entry in the diary of Satya Babu himself. It is enough to say that not calling him as a witness is not a circumstance which weighs much with me, looking to a certain letter in which he is referring to the plff. as the Kumar (Ex. 53) as early as 27-5-31.

Hem Chandra Roy Choudhury (dead).

Zeminder of Dhankora. His cousin Dines Babu's mother and Satyabhama Debi were cousins. He treated the plff. as a relation asked him to dinners. Took him into the inner appartments, invited him to functions, and the plff. as a relation asked him to dinners, took him as Mejokumar. All this in 1921 when the plff. was at Dacca (P.W. 220, 473).

I need not refer to the minor instances of conduct of dead men, and need barely allude to the conduct of Edwin Frasser who burst into tears on seeing the plff. at Jaidebpur (P.W. 212) and Anukul Ghosh, the old tutor of the Kumars when he saw the plff. at Armenitola (P.W. 31).

I turn now to the comparison of the two bodies, one in life, and the other in mind to judge if they are the same.

Comparison of the plff.'s body with that of the Kumar.

You can picture and construct the Kumar's body from (a) photographs (b) recorded details of the body such as might occur in boot makers' or tailors' books (c) clothes or shoes made to order (d) any document describing him, and made before the dispute had arisen, which in this case is the report of the insurance doctor (e) any documents describing him after the dispute arose, but before the issue came to a head, (f) the oral evidence of witnesses who knew him.

It is remarkable, and a fact of compelling significance that although there a "very exhaustive inquiry was made by the Court of Wards" as Satya Babu says, of European tailors—European shoe-makers and saddlers, and this inquiry, as he says, lasted 2 or 3 years, and Satya Babu was in touch with that inquiry, and Mr. Choudhury, the learned counsel for the defdts. must, as he says, have had touch with the papers embodying the results, not a detail out of these papers was proved by the defdt. except that Mr. Choudhury put to Mr. S. J. Ghosal that the size of the Kumar's shoes was six as that happens to the size of the plff. as well, Mr. Choudhury explained, during argument, somewhat ingenuously I thought, that he put that size to Mr. Ghosal, as the plff. was there, and his shoes looked big. Which means he was not instructed to

put the size six which Satya Babu thinks must have been picked up from the papers connected with the inquiry he spoke of. Another remarkable fact is that it is the plff. who relies upon that portion of the insurance paper that contains any personal details. It will be recollected that the plff. declared his identity on the 4th May. Satya Babu got this news, on his own account, from Mr. Needham's report which reached him on the 6th May at the earliest. He at once saw Mr. Lethbridge of the Board of Revenue, and requested that the evidence of death should be safeguarded, handed to him the insurance affidavits—their copies—and proceeded before the 15th May with a barrister to collect evidence of death. On the 10th Mr. Lethbridge had written to the Insurance Company for the original papers, and was informed that the papers were in Scotland, and these arrived, and were sent to the Board of Revenue on 14-7-21 (Ex. 450). The Hon'ble Board returned the papers, including the medical report, on the 15-7-21 with the remark that these should remain with the company, to be produced from their custody, and not with a party to the dispute (Ex. 448). During the suit the defdts. selected, and called for six of the insurance papers: two certificates of death, two certificates of cremation, two certificates of identity, not the medical report. This last the plff. called for towards the close of their case in 1934; and this arrived from Edinburgh, through their local Branch on 15-12-34. Of these documents connected with the insurance, those containing any personal details—any details of the body of the Kumar—were tendered by the Plff. These are the two affidavits of identity called for by the defdts. and the medical report they did not call for at all, though as to one of the affidavits of identity—the identity of the corpse burnt—the case of the plff. is that it goes to show that the body was not that of the Kumar.

The other affidavit of identity called for by the defdt. was that of Rai Bahadur Kali Prosanno Ghosh, also called Vidyasagore, and as to this the learned Counsel for the defdts. said that he was not in a position to admit it (vide order no. 601 dated 12-3-34) though later it was not disputed.

It may be said that the plff. relied upon such details as occur in documents ante litem motam, upon the old clothes and shoes. There is no question that the old clothes and shoes produced were those of the 2nd Kumar, and into these I shall have to deal below. It is also a fact that out of the results obtained by the extensive inquiry into the books of the trades people not one detail has been proved by the defdts. and the single detail revealed out of them—the size 6 of the boots fits the plff. as will appear below, and this was revealed, and put to Mr. Ghosal on the learned Counsel's own impression of the plff's size. It is also worthy of note that the defdts. have not produced anything such as a pair of boots, or a coat—or a pair of trousers, such as widows in this country and probably all over the world, keep as mementos. There is a room at the Rajbari where the old clothes of the Rajah are still preserved (D.W. 98 and P.W. 977). The three young Ranis had seen that, and the idea would occur to them, even if it did not arise from a common impulse of humanity.

Leaving aside now the documents in which a description, full or partial, appears, and to appreciate how one of these the medical report of the insurance doctor—directly it came at the plff's instance began to affect the evidence, I should now turn to the photographs, and the oral evidence. Before reading the photographs I should indicate the points at issue, so that the eye can know what to look for.

Jotirmoyee Debi thus describes her brothers :—

	WITNESS	2nd KUMAR	CHHOTO KUMAR	BUDHU
Complexion	Very fair Spotless white, no colour,	Very fair slight red and yellow tinge,	Very fair with a tinge of rose.	As fair as 2nd. Kumar but not as red.
Eyes	Kata can't give colouring.	Kata like P's	Kata light blue	Kata Blue
Hair	Kata Light brown,	Kata Brown, as P's	Kata Light brown	Kata like 2nd. Kumar's darker than chhoto's

In short she says that the 2nd Kumar's eyes, hair and complexion are the plff.'s eyes, hair, complexion. He is the same man, according to her, so that her evidence is not description but pointing to the man himself. He is darker now she says, but in 1921 seemed brighter than he used to be.

As to the nose, she says that the nose is the same though some people called it broader. She did not see it broader, but it is broader now as he is stouter.

Her evidence as to the appearance of the 2nd Kumar is of no value, or use, as an analysis. She points to the man himself, but the information it contains as to the other three is useful. She and the 2nd Kumar, and the 3rd Kumar had the same sort of complexion to which she gives the name Sahebi (of the English kind), the same sort of hair brown or brownish, and what Bengalees would call the same sort of eyes Kata eyes, not the usual dark of Bengali eyes.

At one stage of the suit Mr. Choudhury was disputing this meaning of the word kata, and disputing the word pingla as applied to the hair to denote brown, until his own witnesses began to describe the plff.'s eyes and the 2nd Kumar's eyes as Kata alike, and nobody has contended that that meant an end of the defdts'. case that the

2nd Kumar's eyes were blue, or as it became later, after the arrival of the medical report of the insurance doctor, gray. Mr. S. P. Ghosh (D. W. commission) who deposed in 1932 described the eyes of the 2nd Kumar and his sister, Jyotirmoyee, and of Chhoto Kumar and Budhu as 'something of kata kind'. When I come to deal with the hair and the eyes I shall deal with the point and it will there appear that the word kata, or the word karanja is the word for all colour, other than ordinary dark, so far as it is applied to eyes ; and the attempt made to elicit that it means a shade of blue, or a particular colour, given up later, need not have been made.

Now it was by no means an admitted fact that the 2nd Kumar and the Chhoto Kumar and Budhu and Jyotirmoyee Debi had the same sort of appearance, very fair complexion, brown or brownish hair, and kata eyes. Rama Nath Roy (D. W. commission) denied that there was any resemblance between the 2nd Kumar and Budhu, though in this country a fair complexion of the kind, or any kind, arrests attention, and after a witness for the plaintiff had mentioned this resemblance between the three and had been asked if he was not colour blind, hundred of witnesses came and spoke to it, till the fact became an admitted fact. or a fact not questioned, seeing that some of the witnesses for the defendants admitted it, and nobody denied it. Sarat (D. W. 32) says that Budhu, Chhoto Kumar. and the 2nd Kumar had complexion of the same kind, but the 2nd Kumar was a little fairer ; that these three had the same kind of hair - lalchha- and the plaintiff's hair is lalchha too.

Lt. Mossain says ;

Budhu was very similar to the 2nd Kumar. Such

complexion, eyes, and hair as the 2nd Kumar, Budhu and Chhoto had are very rare among Bengalees.

Which confirms the evidence on the side of the plaintiff that the witnesses had not seen that sort of appearance among Bengalees. They may be untravelled, but Lt. Hossain is not, and they were talking of Bengalees.

"I had seen Budhu Babu. Chhoto Kumar's appearance I remember—these, and the 2nd Kumar had almost the same sort of appearance I have not seen another man having this sort of appearance says Kalimuddi (D. W. 36).

"2nd Kumar, Chhoto Kumar, Budhu, and Jyotirmoyee Debi resembled in their eyes, hair, and complexion. Says Mr. S. B. Ghosh (D. W. on commission).

And their appearance was so extraordinary that one witness for the defendants says, truthfully in my opinion, that the 2nd Kumar looked like "Saheb Subo", not the people of this country (D. W. 82).

On the facts, and on the defendants' own evidence, the plaintiff resembles the 2nd Knmar, and I have indicated how far on the defendant's own evidence, the resemblance goes. "At first sight he seems to be the same man" (D. W. 336). "If he could answer the question", says another witness, (D. W. 201) "I could believe him to be the 2nd Kumar" another witness says : "Seeing him for 15 or 20 minutes after going close to him I thought that Jyotirmoyee Debi and the rest had made a mistake (D. W. 386). "How could the nose get broad," asks Sukumari Debi (D. W. 280). It is not use multiplying such expressions, seeing that certain situations would not have arisen except on the ground of what these expressions of opinion indicate.

The defendant's case as to the difference between the plaintiff and the 2nd Kumar was first put to the examination in chief of Atul Babu who knew the 2nd Kumar as well as almost anybody.

He gives the points of distinction as sort of schedule of differences thus :

	2nd Kumar.	Plaintiff.
Nose	Thin and pointed	Flat and broad
Hair	Brown	Black.
Eyes	Big, tana (elliptical), a little bluish, like Saheb's	Small, round, pale.
Complexion	2nd Kumar. Reddish, like Saheb's	Plaintiff. White.
Lips	Thin.	Heavy
Moustache	Heavy, brown, kept fixed with 'cosmetic'	Thin
Gait	Helia dulia (rolling)	Ordinary
Height		Perhaps more
Chest	No hair	Hairy
Forehead	Quite level	High
Eye brows	Thick and looked as though painted.	Thin and hairless.

This case was made 8.3.33. No other witness to identity had been examined before, except Mr. S. P. Ghosh (on commission) and by him the defendants did not try to prove any part of this case though he was even more competent than Atul Babu, or quite as competent.

Other witnesses on commission have spoken to the

appearance of the 2nd Kumar, and one of them, Saibalini Debi, gave a few distinctions but in cross examination. Her distinctions are :-

	2nd Kumar	Budhu	Plaintiff.
Eyes	Bluish	Bluish	Whitish
Complexion	Yellow	Very fair	Red.
Hair	Reddish	Reddish	less red,
	Fine beautiful, brushed smooth.		heavy, standing on end, coarse.

Lt—Col, Pulley says in his examination in chief :-
The eldest Kumar.

Had a remarkable face, twisted up on one side, right side the witness thinks, eyes peculiar, a slight squint—the two eyes did not look in the same direction. Tallish, 5ft. 9 or 10 inches.
The 2nd Kumar.

Not so tall, but very remarkable—looking in quite a different way.

Very fair for a Bengalee. There was a suspicion of a complexion slightly rosy.

Eyes—Pale washed out blue

Face—Oval

A very good-looking man.
3rd Kumar.

Was like the 2nd Kumar, very fair, but shorter and stouter. Seeing the plaintiff in Court he says that his hair is dark turned to grey, complexion quite different, eyes totally different colour, shape of the nose quite different, eyes hazel, a shade of green. He sees no point of resemblance he is that he is about the same height as the 2nd Kumar, and both were somewhat bulky.

I am mentioning this evidence of Lt. Col. Pulley as possibly the defendants' case, not because I think that Lt. Col. Pulley has any real recollection of the 2nd Kumar. He was drawing a distinction which seems very impressive, but he had been told a lot of things which were not really and admittedly within his recollection, as I pointed out above, and it is doubtful whether as regards the 2nd Kumar he has any real memory. Mr. Chaudhuri,

for instance has pointed out in his opening, his bulk as a distinction as I shall just mention.

The case next put to Jyotirmoyee Debi, and the distinctions put : were :-

	Plaintiff.	2nd Kumar
Hair	Dark Brown	Lighter
Nose	Fat	Chokha
Nostrils		Different
Eyes		Bluish
Shape of eyes		Different
Size of the eyes		Bigger
Ears		Different
Moustache		Quite thick and turned up at the ends.
Eye-lashes		Brown
Complexion of the face		Fair, but reddish being sunburnt.

Jyotirmoyee denies that the eyes were bluish, denies the differences, where put in that way, and as to the complexion she says that it is the same as the plaintiff's and she does not know if the plaintiff was sunburnt, that the 2nd Kumar would sometimes, but not always, turn up the ends of his moustache. It is rather difficult to understand why it was being asked whether the plaintiff had been sunburnt, seeing that it was becoming a common ground that the Kumar's face was fair and reddish, and the distinction that was going to be made was that the red tinge on the Kumar's face was the result of the sun while that on the plaintiff's face is there by nature like his general complexion.

The case stated in Mr. Chaudhuri's opening is : Plaintiff fair for a Bengalee, so was the 2nd Kumar. The 2nd Kumar's complexion ruddier, body yellowish, face sunburnt hence ruddier.

Eyes of both—Not black : Kumar's eyes gray.

Hair of both—Brown, shades different.

Our case is that the 2nd Kumar was a very much better-looking man, sharp features, sharp nose, large-eyes. The setting of the features, the combined effect

was that he looked a gentleman. The plaintiff looks a bloated palwan. He does not look a gentleman, nor a Bengalee".

The case put in the examination in chief of the 2nd. Rani is this :

2nd Kumar.

Complexion—Very fair, with a yellow tinge. If any body says, fair with a red tinge, not correct.
Asked in re-examination :

Q. Can you tell us what was the colour of your husband's face ?

A. Sunburnt (the word used by the witness)

To Court : Of the reddish kind, such as sunburn produces.

Nose—Tikolo (thin and well-shaped).

Eyes—Big, bhasa (floating i. e. not deep seated on sunken) tana (oval or elliptical).

Nilava, what is called 'blue eyes' (witness's expression).

Hair—Reddish

Moustache Lalche, what is called 'brown'

Eye brows—Lalche (brown)

Long, thin, arched as though painted.

Forehead—Dasturmata (as usual), not high.

Lips—Thin.

Ears—Dasturmata (as usual, not large)

Chest—No hair, except very scanty red hair in the middle. The points of difference—the points at issue being thus brought out—I proceed to decide first those on which the photographs are of no use. Colour plays no part in Photography.

Age.

The 2nd Kumar, if alive today, will be exactly 52 on the 29th July 1936. The plaintiff looks the age.

Height.

The plaintiff's height is 5 feet and 6 inches. The height was measured in Court in my presence, without shoes.

On the 2nd April, 1905 the height entered by Dr. Arnold Caddy the Insurance doctor, with a view to the

2nd Kumar's Life Insurance, in his confidential medical report is 5 ft. 4 inches without shoes (Ex. 230). On that day the 2nd Kumar was 20 years 8 months and 5 days. His date of birth was 28. 7. 1884. The point is whether he could grow an inch more, and could be 5ft. 6 inches today.

Although the defendants deliberately abstained from calling for this report, they know the difference in height between the Kumar of 1905 and the plaintiff, the suggestion that the plaintiff was taller had been made quite early in the case, though not put to Jyotirmoyee Debi, Mr. Chaudhury asked Jitendra (P. W. 9) up to what age did the 2nd Kumar grow, and asked another witness, a cultivator. Up to what age did he grow? The answers were not exact enough to be in his favour, and would be useless if they were.

Two experts have deposed on the side of the plaintiff on the general question as to till what age a man grows, and the expert called for the defendants says nothing on the point. So that it may be taken that on the general question experts do not differ. Lt. Col. Macgilchrist M.A. M.D. (Edinburgh) D. Sc. (Edin) M. R. C.P. (Lond), I.M.S. (retd) whose full qualifications I shall have to give when I deal with the topic of the Kumar's alleged death, but who among other things was Professor of Physiology for 8 years at the Calcutta Medical College says that stature is a definite study in physiology, that in this country a man, grown up to his 25th year and a man, five feet 5 inches at 20 or 21 might grow to 5ft. 6 inches at 25, or the height might increase to anything between 5 to 6 inches. The limit is reached when the ossification of certain bones is complete. The thigh bone for instance, has three centres of ossification, and the ossification extends at these points till they coalesce into one solid bone, which means an end of the growth. It was

suggested that the increase of height in England from the age 20 to the age 50 is a quarter of an inch, that different races "increase in height at the same age differently", and that there was a book by Rudolph Martin on height. Nobody would support these propositions, and it is not known what Mr. Rudolph Martin has said much less his authority. The other Expert is Dr. Bradley B.A. M.D. Ch. M. (Canada) Chief Medical Officer P. and O and British Indian Steam Navigation Co. Fellow of the Royal Society of Tropical Medicine. In India since the War, his opinion is this ; 12 to 21 is most active period of growth in height, other, conditions as to food etc. being equal. We generally expect growth to stop at 22 or 23, but exceptions occur. Immigrants from England, or Scotland or Ireland, for instance, going out into the ranches grow up to 25 or 26. 12 to 21 is the most active period of growth in height, and it goes on after 21 according to authorities, and anthropological data go as far as 30, but the witness considers that—the age 30 as the limit as exceptional, the ossification of the long bones going on till 24, He does not see why a man should not grow between 21 and 25, particularly if he is living an outdoor life shooting, riding, driving as the Kumar. Apart from authorities, he has seen increase in height of the immigrants he mentioned and instanced the case of his own son not an emigrant, I was taller than my son when he was 20. Today he is 25, and he is half an inch taller than I, and weighs more. I took his height about three weeks ago, when he got upon the weighing and measuring machine to gloat over an old man."

The witness has great experience as an Insurance doctor. He has acted as Referee of Manufacturers' Life Insurance Co., and has a great deal of experience of measurements as recorded by Insurance doctors. He has seen variations at renewals, or re-insurance, as has to compare new applications with the old so that his opinion is based not only upon what he has read and what has been taught, but upon experience. He says, for instance that the measurements by the Insurance

doctors are expected to be scientific, that is to say, exact, but he knows that they are not always so, as some examiners have no facilities, such as a measuring table, and they adopt, as often as not, the crude method of putting a man against a wall, and then putting a mark which may not be quite horizontal, a method which the learned Counsel for the defendants elicited from another insurance agent Mr. R. Doss as his method (P. W. 974). It is not necessary to go into the concrete cases in which such increase in height was observed (Ex. 267, 258, 270 to 272) nor do I rely upon such cases. I rely upon the opinion of the two doctors on this point, based upon experience, and there is no evidence to the contrary. The Height and Weight table shewn to me by Mr. Chaudhuri on page 46 of Lyon's Medical Jurisprudence. 7th Ed. (1921) shews the ratio between height and weight and age, the average regularity based on English data. It is of no use on the point under inquiry. I notice the table has been omitted from the later edition (9th Ed. 1935).

It is thus not only possible but probable that the Kumar's growth in height did not stop before he had just attained the age of 21, so that if the plaintiff had been 5ft. and 5 inches, it might well have been urged as a circumstance rather against him. But apart from this probability, there are two other considerations. One of them is that the witnesses on the side of the defendants with a few exceptions do not say that when they saw the plaintiff in 1921 he struck them as taller. Atul Babu (Commission) says the plaintiff is probably taller he was giving his list, and threw that in Phani Babu is down right. The plaintiff is taller, he says. Nothing that he says can count. Look at what other people say:— "Plaintiff slightly taller—I don't say he is different from that alone". (D. W. 140) the plaintiff is slightly taller guess, but the difference is not such that one cannot be the other (D. W. 15). "From height alone one cannot say he is not the Kumar (D. W. 61. a Mahut who would be almost constantly with the Kumar). Dr. Ashutosh or Rai Saheb say nothing on the point. Satyendra Babu who saw him at Court, only, in 1935: "I thought him

taller, but difference of stature not important" i. e. one could not be sure it exists. Lt. Col. Pulley thinks that the Kumar was about the same height as the plaintiff does not suggest any difference. He saw him in 1909 as much as he could between the 14th February and 18th April, if he saw him at all. Mr. Rankin-thinks that the plaintiff is about the same height. One witness for the defendants is most interesting. He says that the plaintiff is only slightly taller "how could he be very much taller?" One witness for the defendant says that the plaintiff is 3 or 4 inches taller, that he is so much taller that is enough to shew that he is not the man. These two witnesses may be discarded. Even Atul Babu could not go beyond a 'perhaps'. Looking to the age on the 2nd April 1905, the expert's opinion, the probability that the growth did not stop, the evidence of Mr. Rankin, the silence of material witnesses who knew the Kumar well, the direct evidence on the point, another consideration is conclusive. Extensive inquiries were made in the shops of English tailors where the Kumars' measurements would exist, and Satya Babu who admits this inquiry says that the results much have been placed before learned Counsel, and that out of these he must have put-size six for boots, I have said above that Mr. Chaudhuri explained how he came to put it, but the fact I am now concerned with is that there was this inquiry, and there were the results, and Satya Babu does not say that these were negative. Tailors making clothes to order generally note the full height, That is not forthcoming. The last item in a tailor's bill put in by the defendants is dated 6th August 1906 (Ex. Z. 221). It is a bill of Messrs. Phelps and Co. of Calcutta. It seems to be a joint bill for supplying articles not only to Bara Kumar in whose name the bill is made out, but to other Kumars as well and possibly to other people also, though it is not clear. In any case the suggestion was that Messrs. Phelps and Messrs. Harman made some-clothes for the 2nd Kumar. Now it is not disputed that the 2nd Rani made over, as a gift to Buddhu certain clothes for the 2nd Kumar, and some of these have been produced in Court. This evidence the Rani did

not deny nor did she or anybody else deny the identity of the clothes produced in Court. I have looked at these clothes. They are old clothes, and some of them bear the little linen tabs which tailors saw on to garments they make. These clothes include a pair of velvet shikar coats, and another shikar coat and a gorgeous durbar dress whose gold embroidery has not still altogether tarnished (Ex. XXVIII, XXVI, XXI, XXII). The XXI is the durbar coat, and the EX. XXII is a pair of trousers embroidered at the side seems, to match. The Ex. XXVIII and Ex. XXVI are the two yellow shikar coats, each bearing a tab with the name Harman and Co. and the name Ramendra Narayan Roy, and the date 27-1-09, Ex. XXVII is the 3rd shikar coat, and this bears also the tab of Messrs. Harman and the 2nd Kumar's name, and the date 20-1-09. These seem to have been made with an eye to Lord Kitchener's visit in February 1909, but I would not speculate, nor do I accept the tabs as evidence, except as a circumstance. These clothes are undoubtedly the old clothes of the 2nd Kumar as also the rest, not mentioned above, as the evidence, as I said has not been disputed. On the other hand Mr. Chaudhuri asked Jyotirmoyee Debi whether these had not been altered to fit the plaintiff. I have looked at the clothes I saw no alteration. Now lawyer on the side of the defendants referred to the suggestion to the Jyotirmoyee Debi, much-less point out to me any alteration or anything suspicious. There is no doubt whatever that the clothes are the old clothes of the Kumar the 2nd Kumar. The plaintiff when he was in Calcutta put on this durbar dress and had a photo taken of him. Ex. XVIII is that photo. He put on the shikar-coat, and appears in that coat in the photo marked XXIV. That it is the identical durbar dress and the identical shikar coat is the evidence of Jyotirmoyee Debi and no argument was addressed to shew that the dresses there are different nor was this suggested-altered to fit was all the suggestion and even that was abandoned. I have satisfied myself by

looking at the dress and the coat that they are in the photos. Now I notice that the trousers in XVIII, the durbar dress photo gather at the ankles and Mr. Chaudhuri pointed to this as misfit. It is obvious therefore that the plaintiff was not taller than the Kumar, though you might call him shorter if you do not look at the trousers and found that the trousers in this sort of dress are made a little top long, and buckles under the soles of the shoes. The buckles are in the trousers, but it seems they were not buckled up when the photo was taken. I find that if the 2nd Kumar be alive he may well have the height of the plaintiff, and this height does not displace his identity and must be taken as not in conflict with any measurement that the defendants must have collected.

Figure.

In his opening the learned Counsel for the defendants mentioned as a point of distinction that the 2nd Kumar looked like a gentleman, while this man looks like a "bloated palwan." In short he is fat. He might as well point out, as a distinction, that the Kumar was 25 and this man is fifty two. As to the complexion of the plaintiff there is no difficulty. He, the plaintiff is a very fair man and his complexion though dulled by age has still a tinge of red. It is this that the witnesses for the defendants were insisting upon as a distinction this reddishness and the fact that he has grown less fair has suggested the case, of which one finds no trace during the time the witnesses were being examined on commission, that the plaintiff is not only red, while the 2nd Kumar was yellow, but he is darker.

Jyotirmoyee Debi says that the plaintiff has grown darker now, but in 1921 when he arrived he was even fairer than he used to be. Before this evidence there was no suggestion that he was less fair. On the other hand there was a suggestion that he was even fairer as a certain pamphlet had said (P.W.34). Hundreds of witnesses deposed to the complexion of the 2nd Kumar, but there was no suggestion that the plaintiff

was darker. P.W.438 who said that he saw the plaintiff at the house of Jyotirmoyee Debi in May 1921 and he recognised him as the 2nd Kumar, was asked in cross-examination.

Q. You saw a very white man seated ?

A. Yes.

"I found all people eagerly looking at him. From that I understood they had come to see the Kumar.

Q. From this and a man as fair as the Kumar you had no doubt that he was the Kumar ?

A. Yes from his appearance.

The distinction earliest in vogue was that the 2nd Kumar "was reddish—like white" while the plaintiff was "white" that is in the deposition of Atul Babu on commission in the string of difference he gave in examination-in-chief. It was Saibalini Debi who first introduced the yellow that the 2nd Kumar was yellow or yellowish, but the plaintiff is red. According to Atul Babu plaintiff is not sufficiently red. According to Saibalini Debi he is too much so.

To Jyotirmoyee Debi the learned Counsel dared not to put his case as to the complexion, except in this fashion : that the complexion of the face of the 2nd Kumar was "fair but reddish" being sunburnt. The word sunburnt was learned Counsel's own word. The case was going to be that the 2nd Kumar was yellowish—that is what the Rani said but Lt. Col. Pulley had seen on the 2nd Kumar's suspicion of a complexion. "What appeared so even to an English man. So there was this redness of the face, but it was the effect to this sunburn.

I shall come to this sunburn, but the case that remains, and has to be considered, is that the 2nd Kumar's complexion is fair, and yellowish, with a red flush in the face. as he was sunburnt. The case that the plaintiff's complexion is 'darker is an afterthought upon perception of the dullness produced by age. The case put to P. W. 438 was that he was as fair as the Kumar. That ought to be enough to dispose of the

point. The defendants came with this afterthought during the progress of their case, and in reply to a petition filed by the plaintiff they filed a petition on 9-8-35 the paper No. 3204 of file stating that their case as to the 2nd Kumar's complexion is that in the evidence of the defendant No. 1 the 2nd Rani—that he was a very fair complexioned man with a yellow tinge for the body, and a bit sunburnt in the face” and they go on to say, inter-alia, that the plaintiff was less fair as the plaintiff himself has suggested : that there is a difference, though many people may not be able to detect it at this distance of time or its extent.

The one thing about the 2nd Kumar as to which every body is agreed is his wonderful complexion which a lady had described as milk and lac complexion, or what Lt. Col. Pulley called rosy. Even English people call him fair or vary fair. If, in 1921, the plaintiff were looking darker, that would be instantly mentioned, and seized upon as a point of distinction from the very beginning of the trial. What was suggested was a difference in kind that he is white, while the 2nd Kumar was red ; that (as said later) he is yellowish, while this man is red.

As to the complexion of the plaintiff in 1921, we have these statements on the side of the defendants :

“Beautifully clear skin”	...	Mr. Lindsay
“Healthy white”	...	Mr. Gupta (D.W. 25)
“Beautiful fairman	...	Mr. Debabrata
		Mukerjee (on comn).

Q. Is the complexion of the plaintiff different ?

A. Not wholly.

Plaintiff fair but with a red tinge.

Q. If any body says the 2nd Kumar's face was Lalchha (reddish) would that be true ?

A. It was somewhat lalchha.

The 2nd Kumar's face was fair and Lalchha. I would agree to Lalchha. I said *kichhu lalchha*, as it was “sunburnt”. The complexion of the plaintiff's face

is also lalchha, but it was lalchha, as one sees on the face of a Saheb. It did not appear to be "sunburnt".

. So says Kali Prosanno Chakraborty (D. W. 14) a teacher at Jaidebpur, a person whose post is at the mercy of the estate and whose efforts to prove the literacy of the 2nd Kumar will have to be dealt with below.

Mr. Jamini Ganguli a painter of great repute, and a man of high position whose full qualifications and status I shall have to mention below. and who has painted portion of Lady Hardinge and other notabilities and is himself a fair man is not likely fulsome on complexions. He says: "It may be said I am a good judge of complexion. I think the plaintiff is at present a wee bit fairer than I am. A European in tropical climate has the same sort of complexion—I mean born in tropical climate. Fresh from England he would be fairer than plaintiff. I must say that at one time plaintiff must have been very fair indeed." He describes the present complexion as 'fair, rather sunburn pinkish' In his earlier days he must have had a very bright complexion. I agree with him, and can say from my own observation at Court, that the plaintiff's complexion is pinkish fair-white and pink, not the yellow sort that passes as fair among Bengalees. This opinion involves some construction of the complexion, as it really was, if you think away the effect of age, and as you may still find if you look at his arms under the shirt. Nobody's complexion is always exactly the same. It varies with age, with health, with anxiety, with the hour of the day, with the light you see it in, with the weather, with the food or drink absorbed. When you think of a complexion, or try to describe it, you generalise these changes, and fix upon the kind of thing it is, despite variations from moment to moment, from age to youth, and give the thing a name, but can indicate it best by a type. It is like a rose, or it is like milk and rose, though words like tan, creamy, olive, ivory, marble pink, was peach like, copper-brown, indicate to some extent the share but Bengalee in which most of the witnesses have de-

posed is naturally poor in such words, so the utmost they could do is to call it Sahebi, i. e. of the European kind, but Khan Saheb A. M. A. Hamid indicated it best. "The 2nd Kumar he says was a beautiful fair-looking gentleman with a peculiar kind of fairness. Except in colour I found very little similarity between the plaintiff and the 2nd Kumar. The plaintiff and Budhu resembled in colour, and nothing else". On the day he saw the plaintiff he saw Budhu as well, at the same time and place, and he added that when he said that the plaintiff and the 2nd Kumar were otherwise different, he might be mistaken.

Now what was Budhu's complexion? It was Sahebi like Chhoto Kumar's and Mejo Kumar's and like her own, say Jyotirmoyee Debi, with this difference that Budhu was not as red as the 2nd Kumar, but Chhoto Kumar's was very fair with a tinge of rose. The 2nd Rani admits that the Chhoto Kumar was very fair with a tinge of red. Saibalini calls the Chhoto Kumar "very fair". Mr. Rankin calls him darker than the 2nd Kumar, but Lt. Col. Pulley who certainly knew him very well he played Polo with him at all events and sold a pony to him says he is as fair as the 2nd Kumar, and Saubhagya Chand (D. W. 87) calls him the fairest of the lot.

The evidence on the side of the defendants therefore show that the complexion of the plaintiff is the same as that of the 2nd Kumar. What Khan Saheb Abdul Hamid says will appear from the evidence of other witnesses as well, except those ridden by the case that the 2nd Kumar was yellowish. This yellowish tint is absolutely swept away by the evidence produced by the defendants and what remains as the complexion of the 2nd Kumar is pink-and-white or milk and lac, as witness for the plaintiff has said.

Saibalini started the yellow, without a red face. Lt. Col. Pulley spoke of the 2nd Kumar as a very fair man, with a suspicion of complexion rosy. Jyotirmoyee Debi said long afterwards that her complexion is pale, but the 2nd Kumar's complexion

had a tinge of yellow and red, like the plaintiff's by which she meant that it was not pale, or waxen white like hers, but had some colour. This witness was in my full view for days, and I saw that her complexion was almost white almost European, but extremely pale, without the slightest tinge of colour. She did not mean by yellow tint saying to distinguish the plaintiff but pointed to the plaintiff's complexion as the thing she means. The yellow of the 2nd Rani is a yellow tint, such as distinguishes the plaintiff, and the witnesses who saying that the complexion of the 2nd Kumar was Sahebi were being cross-examined by Mr. Chaudhury to shew that nobody's complexion could be Sahebi as though any body who was calling it Sahebi was calling it exactly European which no Bengalee complexion can be. By the word Sahebi they were trying to indicate a kind which is different from the bright yellow which is also called fair in this country, One witness for the defendants has indicated the distinction rather well. The 2nd Kumar, he says was not *gowbarna* but *Suda dhabdhaba* i. e. not the bright yellow which, at its best, is compared to molten gold but white. His complexion is described as Sahebi to denote this distinction. It was no more pure European than a rosy cheek is literally like a rose or a sword-like nose (a Bengalee term) is sharp as sword, Now the following are some of the descriptions of the 2nd Kumar's complexion.

Sahebi (P. W. 210, 366, 426, 660)

Fair as Saheb (P. W. 458, D. W. 57, 63, 72, 74, 83, 27, 30, 37, 39, 54, 37 and others.) like an English Saheb (D. W. 427 a pleader : 40) Fair as a Saheb and red (D. W. 30, 427, a pleader, P. W. 472 Abdul Monnan, and others).

"Of the three Kumars it was the 2nd Kumar's complexion that was red and pucca"—Shib Chandra Mitra (D. W. on commission) "Reddish like white" — (Atul Prosad D. W. on commission)

'Norweagian ; Pink flush on white' (Mr. N. K. Nag Bar-at-law P. 49).

"Fairer than a fair Bengalee almost European"
(D. W. Lt. Hossain.)

"Very fair, with a suspicion of a complexion, rosy"
- (Col. Pulley).

This is the complexion of the plaintiff. The yellow-tinge to distinguish him has been swept away by the witnesses on either side and with it, go the partisan witnesses, the Chhoto Rani, Phani Babu, Rai Saheb (D. W. 310) Satya Babu (380), Birendra (D. W. 290) Kali (D. W. 14), Kamini (D. W. 364) and Abani (D. W. 324). It is worthy of note that these are all employees of the estate, except Rai Saheb the chief tadbirkar and Satya Babu and Phani Babu, and the two Ranis. The attempt to 'reconcile Col. Pulley's "rosy" with Saibalini's 'yellow', by the doctrine of sunburn speaks for itself. It is a notion drawn from English novel and there too it is tan, or bronze. "Nobody has heard of "sunburnt," the old Kamini Khajanchi (D. W. 364)." If any body says *rodepora* (sun burnt) it is false, says D. W. 309 Sarbo Mohon. The complexion of the 2nd Kumar was white and pink which is the complexion of the plaintiff, and truth was in the question put to P. W. 438 in cross examination that the complexion of the plaintiff is the same. I find accordingly.

Colour of hair, moustache, and eye-brows.

The hair of the plaintiff as I saw it, is reddish dark, or dark which has a glint of red, not the ordinary black hair of a Bengalee, generally speaking.

That is now agreed Mr. Chaudhuri when the 660th witness Jyotirmoyee Debi was in the box put the case that the plaintiff, hair is dark brown, but the Kumar's hair was brown i. e. lighter.

The distinction, at first in vogue, was that the plaintiff's hair is *Kalo* or black, while the Kumar's

hair was brown. That is in Atul Babu's schedule of distinctions given in examination-in-chief. Consistently with this the ten Lahore witnesses, examined later on commission shew that the plaintiff is a Sikh peasant of Aujla whose name was Mal Singh, say that Mal Singh's hair was black. Some-body had forgotten then that Mr. Lindsay who saw it on the 29th May 1921-25 days after the declaration of identity noted on the same day that it was beautiful golden brown. That is a mistake, as every body agrees, but nobody could mistake black for gold.

Then began an attempt to reconcile the two, like the attempt to reconcile Col. Pulley's rosy with Saibali's yellow, and in this case the thing that was going to do it was not sunburnt, but neglect. The young boy, Mal Singh, became a Sannyasi, and his hair got matted, and brown through neglect, lack of oil, dust, and possibly a little of the sun too. The plaintiff was asked if his hair had not lost its natural colour by 12 years' abstention from oil, and the proposition that black hair gets brown by neglect was put to a lot of witnesses (P. W. 365, 365, 155, 377, 455, 938, and 660), and a proposition supposed to be the same was elicited from Mr. Jamini Ganguli that if you do not oil your hair, or neglect it, it gets off colour, and acquires a dirty brown.

And the plaintiff frightened by this theory, called witnesses (P. 961, 1010, 435) who never oiled their hair, or not for years, and whose hair remains the ordinary black and Jyotirmoyee Debi to whom also this point was put despite the concession of brown at that stage, and the cessation of the need though not of the habit, said that hair not oiled gets dry, but does not get red. The case eventually came to be that the plaintiff's hair has the colour as the 2nd Kumar's, and some witnesses who later came to prove that the plaintiff was Mal Singh of Aujla said that Mal Singh's hair was *kakka bhura* or as one witness explained, dull gold the word *kakka* meaning gold (Sans, Kanak).

As some difference in shade was suggested, though the hair in either is pingala or reddish, and though some witnesses for the defendants have called it the same in both, I should go into the matter, a little more fully.

Bengalee hair, generally speaking, is black, or as it appears to a European witness Bluish Black and called Kalo. In exceptional cases not counting albinos who are rare, it is reddish, or even red, and that is called Kata. The plaintiff calls this hair kata.

Jyotirmoyee Debi's hair is light brown now. She calls it Kata and asked to give the colouring, calls it brown. The word more in vogue in these parts is pingala, but the word kata, though more in vogue to denote such hair in west Bengal, has been used by a purely Bhowal witness as well (i. e. D.W. 290), Sukumari Debi (D.W. 280) as might be expected uses the word kata, and gives the word lalchha, as the colouring. In connection with hair, the word kata has practically this meaning though in connection with eyes it means anything other than ordinary dark. In the case of hair too the meaning is that, but the residue has little more content than red or reddish, or brown or brownish.

The word pingala denotes a class of hair the brown but does not denote the shade, so that I appreciated the efforts made by Mr. Chaudhuri to get at the shade from the plaintiff's witnesses who were describing the 2nd Kumar's hair as pingala. I did not appreciate however the efforts to shew that the word pingala had been invented, or picked up for the purpose of this case. He asked a witness, for instance when he had picked up the word (P. 14), or how long they had known it (P. 82) whether they knew the word before the 2nd Kumar went to Darjeeling (P.314).

The witnesses were trying to indicate the exact shade of pingala of the 2nd Kumar's hair and here again was the difficulty arising from want of words, not shared to the same extent by the English language, but so far as the plaintiff's witnesses are concerned Mr. Chaudhuri got a shade. It was not flaming red (P. W. 355), It was not like *Mendi*, but darker (P. 135). It was blackish red (P. W. 314). It was *Lalchha* or *Reddish* (P. 263). It was not the colour of a new pice, but tarnished pice (P. W. 101). It was copperish (P. 210), It was the colour of old copper (P. 135), the colour of the sacred copper vessels (P. 355). It was *tamate* (Copperish P. 89), It was the colour of the railings of the witness-box. something like it (P. 12).

In short Mr. Chaudhuri elicits, it was copperish, The description on the defendants side is the same. It was pingala or red or reddish (D.W. 19,27,35,37,39,43,44,45,47, 58,70,76,140,159,290,310,324,325,397,348). The witnesses got rather lavish in the use of the word Pingala some call it brown or brownish (D. 365,120 365). As to the shade, we reach the same word; it was tamate, says D.W. 3 Joges, a former Naib; that is copperish. Chhoto Rani says tamrabarna (copper-coloured.) Lt. Col. Pulley describes it as "inclined to be auborn a distinct shade of red. That is the colour of the plaintiff's hair. It is copperish, and even the possibility of any difference in shade is excluded by the statement of the old Naib, Kanini (D. W. 364) that the colour of the plaintiff's hair is the same. Kanini, No. 371, the old khajanchi, Abani, another old employee (D. 338) Alimuddin, an old peasant (D. 145) say the same thing. Rai Saheb Jogendra would not speak of any difference. Phani Babu of course does so, and some

peasants and others who have obviously been tutored to keep the thing elusive, but Kali, one of these (D. W. 14) says 'that from difference of hair alone I do not say they are different-people have the same kind of hair' I find the plaintiff's hair has the same colour as that of the 2nd Kumar.

As I am on the hair, I may as well deal with one characteristic of both. In either it is wavy, or curling. It is the defendants' case that the 2nd Kumar's hair was curling wavy, and the suggestion was that the plaintiff's hair is straight. Saibalini Debi distinguished the hair by calling the 2nd Kumar's hair as fine, well-kept. light ; that of the Sadhu, heavy, rough, standuppish. Mr. Percy Brown for the defendants, as the result of his comparison of the photos, had come to the conclusion that the plaintiff's hair is of the straight variety, "and the Kumar's hair wavy. Obviously the photos in which the plaintiff's jata appears were kept from him or he would have seen his beautiful curls. I saw the plaintiff's hair at Court in the presence of the lawyer on both sides. His hair is wavy, both in front and back. I recorded this observation on 27-4-36. It is on the record coppery hair is exceptional-curling hair exceptional. Hair coppery as well as curling the more so.

Colour of the moustache.

In the Kumar's it was "several degrees lighter than hair. (Col. Pulley D.W.I). Mr. Ganguli who never knew the 2nd Kumar says as regards the plaintiff's hair that it is brown, the exact shade being burnt umber, and that the moustache is lighter. Nobody has disputed this. I find that in both the moustache is brown and several degrees lighter than hair.

Colour of eye brows

Brownish in both. No argument was addressed to me on the colour of the eye-brows, though there is a great deal on its shape or size. Sarba Mohon, the D. W. examined on commission, took up its colour as a distinction. He says that the Kumar had beautiful black, well-shaped eye-brows. The 2nd Rani herself says they were reddish, as did some of the defendants' witnesses also e. g. D. 182.

Eye-lashes.

No point was made of this feature. It is not suggested that there is any distinction. One witness for the plaintiff was asked about the 2nd Kumar's eye-lashes, and his answer was that these were fair, whatever that might mean, and the point was not pursued.

Colour of the eyes :

This topic presents features of great interest. The colour of the plaintiff's eyes are brown, light brown to be exact, as Mr. Ganguli, the painter, says. To paint it he says, I would use burnt umber (which he had said was colour of his hair) but mix it with other colours to make it lighter in depth." Rai Saheb for the defendants (D. W. 310) calls it brownish, and had noticed it from the beginning from the time he visited Jaidebpur first in April 1921. There is no dispute that the plaintiff's hair is brown.

As to the colour of the 2nd Kumar's eyes, the case of the defendants is, or rather was, that it was bluish. It continued so in this case in the sense that after the arrival of the Insurance doctor's medical report in which the colour has been noted as gray, the case is that his eyes were gray which is akin to blue, and which common people would call bluish.

Lt. Col. Pulley who was examined long before the arrival of the Insurance doctor's report had said that the 2nd Kumar's eyes were pale washed out blue." He said, and it also appeared, that Col. Pulley is an amateur artist, although his claim that he could picture how a boy is going to look when old, struck me as somewhat fantastic, there is no doubt whatever that he has some eye

for colour, and for detail. He did not call the eyes gray ; and seeing that he had been misled into saying things, such as the English accents of the Kumars, and things about the Lord Kitchener's shoot proved demonstratively, and on his own admission to be things that has not occurred to his knowledge and seeing also that the Chhoto Kumar's eyes he certainly came to know him were what might be called bluish, it has to be seen whether this particular statement about the 2nd Kumar's faded blue eyes is also not one which he had been told, and taken for granted, like the English accent, and Lord Kitchener's shoot or whether he was not drawing from his memory of the Chhoto Kumar. He says for instance, that the plaintiff and the 2nd Kumar resembled in bulk they are about the same bulk he says, though it is agreed that the plaintiff is fat, but the 2nd Kumar was muscular and well built. Chhoto Kumar was fat. Vide his photos, XCVIII,—Ex. LV. Ex. a (17) No confusion with Bara Kumar was possible, as he was dark, and had a twisted mouth, and a hairless face.

Leaving aside this evidence for the moment, the case that the 2nd Kumar's eyes were blue began with Atul Babu (on commission) in his schedule of distinctions he mentions the eyes, and calls them, slightly bluish like Sahebs.

Other statements before the trial began are :

"A shade of blue" (Saibalini)

"Bluish" (Jatindra on commission)

"Light eyes" (Mr. Meyer on commission).

"Karanja" (Ramanath on commission)

"Kata Ranjan Sett" (On commission)

"Iris, like that of Sahebs" (Sarbamohan, on commission)

"The eyes of the 2nd Kumar, Chhoto Kumar, Budhu and Jyoti were all a little of the kata kind" (Mr. S. P. Ghosh).

"Cat's eye" (Morel and Jagadish, on commission).

Now the eyes of Jyotirmoyee Debi are hazel, those of Chhoto Kumar bluish, and those of Budhu, a little deeper bluish. That is not disputed. I saw the eyes of Jyotir-

moyce herself, and noted the colour in her deposition as I saw it, without giving it a name. Mr. Winterton called that hazel, and there is no question that that name fits the colour. It is very much like the colour of the Artificial eye marked Ex. CxV (originally marked X (194) for identification).

Now it will be noticed that Mr. S. P. Ghosh is calling all these pair of eyes kata and Jagadish a pleader, (D. W. on commission) was calling the eyes of the 2nd Kumar and Budhu, Jyoti as 'cat's eyes but this did not deter the defendants from beginning and carrying on a futile attempt to shew that the expression, *biral chok*, or cat's eyes, and the expression Kata denotes a shade of blue, or that these two words convey to Bengalee minds a certain colour. It conveys nothing except that the eyes, so designated, are not dark, the colour of ordinary Bengalee eyes, nor black, which few Bengalee eyes are, most being dark.

This appears from the evidence on either side. Mr. S. P. Ghosh an educated gentleman and a Magistrate puts hazel and bluish into the same class. So does Jagadish, the pleader, so do numerous other witnesses on the side of the defendants. If the word kata conveyed a definite colour this issue would not take much time, as witnesses on the side of the defendants have said that the plaintiff and the 2nd Kumar have this resemblance that their eyes have the same colour viz : kata, that is to say, they are not ordinary black or dark. If therefore anybody says that the 2nd Kumar's eyes were kata, he does not mean a particular colouring, but negatives the ordinary dark, which also is useful information. I would not go into the long list of witnesses on the plaintiff's side cross-examined to shew the attempt I mentioned but should give a few of the defendants' witnesses who concludes the point :

What is not dark is kata : D:W.3, 21. 140.

The eyes of Jyotirmoyee and 2nd Kumar were kata (D.W.21). The plaintiff and the 2nd Kumar had both kata eyes (D.32,58,371,59,122).

D.W.122 Ramanath says that the plaintiff and the

Kumar resembled in nothing except in the colour of hair and eyes which were kata. The colour of the eyes, says Jabbar Khan is the same (D.W. 59). Every body, not merely the peasant uses the word in that sense which are not dark are kata.

Some people, particularly Mahomedans, use the word Karanja instead of kata and exactly in the same sense (e.g. D. W. 130, 131, 133, 323, 38, 64, 69, 79, 337, 354) Ramanath (D. W. on commission) used the word *karanja*). The expression, *biralchok* is used precisely in the same sense. Eyes which are not ordinary dark are called biralchok without denoting any particular colour, save that it is not the usual dark. Jagadish D.W. (on commission) says : Jyoti, Mejo Kumar, Budhu and all biralchokhu. Eyes which are not the usual dark are called biralchok, says Durga Das Pal, D.W. 57. They are also called kata, he adds. Dr. Ashutosh hastens to say that as he had said somewhere that the 2nd Kumar's eyes were biralchok, and had made the mistake of saying that biralchok means brown. It appears that in Punjab too eyes, as regards colour, fall into two classes : mamuli or ordinary black, and billi, what is not so. This information was obtained from Lt. Raghubar Singh (D.W. 355) a very respectable Sikh gentleman of the Punjab, who will have to be mentioned again when we come to the story of Mal Singh.

Now Kata eyes, though exceptional, and though classed together under one name must have some colour, and this must vary, but nobody in the country, or in Bengal at all events, and the Punjab trouble about or notice the colouring, so that nobody refers to Kata eyes as blue or pale blue or water blue, or faded blue, or gray, or bluish gray or steel gray, or hazel or violet, or tawny, or greenhazel or the like. Few of such shades exist in, this country, or at all events in Bengal, and those that exist and get classed as kata are usually not pleasing shades, but discolour, so that kata eyes, like kata hair, are somewhat disfavoured in this country. Sukumrri Debi, D.W. 283 was reluctant to admit this, but admitted it in effect, when she said that if she were choosing a bride, she, would not mind kata eyes, if she is otherwise good

looking. Nobody notices the colouring of kata eyes, and everybody is usually content with the perception that they are kata, so that none, but near relations and perhaps not even they would be able to say the exact colour of a pair of kata eyes they know. Mr. S. P. Ghosh, for instance knew the 2nd Kumar from his own childhood till 1901, and saw him afterwards also, and he knew Jyotirmoyee Debi quite as well. He put their eyes into the same class, though the lady's eyes are hazel.

Now when one is accustomed to class all such eyes as kata, and has occasion to translate the word, one would use the word, 'gray'. The plaintiff said, for instance, that his eyes were kata. I took down the word, but put within brackets the word 'gray' as its equivalent. It was of course wrong, but the use of the word 'gray' for kata is I believe, common D.W. 3 Jogendra translated kata eyes as gray eyes. Mr. R. C. Sen, Bar-at-law who was in England for eight years and of whom one would expect better says that Mr. X who is his friend, whom he has met at clubs, parties, dinners and other meals, and whom he has known all these years down to the day of his deposition has kata eyes, but he cannot say what their colouring is. He has known him since 1899. He mentions another who had gray or kata eyes. Asked to give their colour he said, he could not do so. He was translating *kata* into gray.

I would not therefore examine the witnesses on either side except the very near relations or people who knew the 2nd Kumar intimately, so far as they pretend to give the colour of the 2nd Kumar's eyes. They certainly knew that the eyes were kata, but even the old khajanchi D.W. 371 did not know more. I would notice however the European witnesses, as they I suppose notice colours of eyes or there would not be so many words for the shades in the English language. I must state however that the witnesses who say that the eyes of the 2nd Kumar and the plaintiff's are the same colour contribute this to the evidence, if what they say is true that they, on seeing the plaintiff felt no shock of difference, so far as the eyes go, and such witnesses are on the side of the defendants as well. It is not necessary to mention them. They are

too many. They must be remembered as an assurance when the conclusion is otherwise reached.

On the side of the plaintiff I may mention the following among those who speak to the "brown" or brownish.

1. Joytirmoyee (p660).
2. Billoo Babu, (p 938), the sister's son.
3. Sagor Babu, the son-in-law of I. (917 P.W.).
4. Sarojini Debi (P.W. 1026). Among non-relatives.
5. Rebati Babu, the pleader (p62).
6. Manindra Babu, Lecturer of the Calcutta University (p. 155).

7. Mr. N. K. Nag, Barrister (p. 459).
8. Mr. Hiranmoy Biswas, Pleader (P. 921).

On the other side I may give the full list.

Col. Pulley D.W. 1.

The 2nd Rani.

The 3rd Rani

Saubhagya Chand (D. 87) the party in the criminal case before Satya Babu.

Bepin (D. 140) an old Khansama, now a duftry in the service of the estate.

Rai Saheb Jogendra (D. 310) the tadbirkar for the suit.

Lt. Hossain (D4) the witness I discussed above.

Sukumari Debi (D 280) the 2nd Rani's cousin.

Saibalini, Phani Babu's sister.

Jitendra, Phani Babu's intimate friend.

Atul Babu (on commission).

Phani Babu, (D.W. 92)

Birendra, an officer of the estate (D. W. 290)

Of these, Jitendra could not possibly have noticed the shade, but there is a document, and certain facts which will decide the conflict between these two bodies of testimony. Before I come to them I should deal with the evidence of the European witnesses and Mr. K. C. De who hardly supports the defendants.

Mr. K. C. De had seen the Kumars all of them, and together at a Railway station, and at functions, like garden parties 26 years before he came to depose. Asked in examination in chief whether the 2nd Kumar and the

plaintiff had any resemblance, he says "Both are fair. Both have blue eyes, or at least light eyes." He adds in cross examination that millions of people have blue eyes. This evidence is rather in favour of the plaintiff. He has felt no shock of difference though he does not recollect the colour, and the colour he saw was common, which blue in this country certainly is not. It may be said to be extremely rare.

Mr. Meyer says that the 2nd Kumar's eyes were light, and does not give the colour. That might include very light brown, as Mr. Rankin says. Lt. Col. Pulley had taken so many things on trust that I do not feel that "this faded blue" of his does not fall into the same category as the English accent, and Lord Kitchener's shoot which had not taken place within his knowledge, but which as he virtually admitted, he had been persuaded to believe were within his knowledge and recollection. He knew the 3rd Kumar, played polo with him, and his eyes were bluish and he was confusing him with the 2nd Kumar seeing that he says that the plaintiff and 2nd Kumar were of the same bulk. Chhoto Kumar was fat (Vide his photos).

Mr. Rankin had seen the 2nd Kumar some 27 years before he came to depose. In his evidence in chief he says that the colour of the 2nd Kumar's eyes were lightish. He did not give the colour. In answer to a question put by me he said that by lightish he meant blue or gray. In his examination in chief, the defence had obtained from him the fact that the witness's own eyes may be called gray or blue, and he admits that he had been asked a question about gray and blue eyes. One sees the effect of the Insurance doctor's medical report on the evidence. Asked whether he would agree if Rai Bahadur Kali Prasanna Ghosh had said in an affidavit (as he had in fact done) that the 2nd Kumar's eyes were brownish. Mr. Chaudhury interfered, and objected on the ground that it is not fair to the witness as there were other statements on the point. The witness was not a Judge before whom the whole evidence must be put, but what Mr. Chatterjee for the plaintiff was trying to find out was whether this

'gray or blue' itself dubious recollection was really within the witness's recollection. The witness does not remember, for instance the colour of the 3rd Kumar's eyes, though he had seen him equally often and longer seeing that he survived till 1913. It is perfectly clear that Mr. Rankin's recollection like his examination in chief, does not go beyond 'lightish'. I recollect his statement that if anybody said that the plaintiff was looking like the 2nd Kumar, he might be telling the truth for aught he knows.

I will not deal with Mr. Pliva a hotel-keeper of Darjeeling who professes to remember, 26 years after, that the 2nd Kumar's eyes were "blue" not gray he says and another witness, Durga (D. 57) who says he saw him 4 or 5 times at Mall after 5 P.M. and who saw the pink on his face was proving the complexion six hours after his death, on the defendants' case. I may add that the witnesses who say that kata eyes or biralchok (cat's eyes) means blue or bluish eye have given false evidence, or reckless evidence, with an eye to the case. Many witnesses on either side, have called the plaintiff's eyes kata, and agree that this word denotes any colour other than dark or black Sukumari Debi, for instance gives an interesting disquisition on kata, ending in the obvious, but trying to suggest sky-blue, or faint blue, as whoever had tutored her had an eye to the gray in the medical report. The think became manifest in one witness who says that kata means generally "Bluish gray". I do not think looking to his position, that he was tutored, but obviously he had heard how the case stood (D. W. 53).

What really decides the conflict is an affidavit sworn by Rai Kali Prosanna Ghosh Bahadur, the old Manager of Bhowal. He had been manager from before the Rajah's marriage, and seen each of the Kumars from their birth till 1901, and thereafter also at Dacca, as the Kumars would see him as an old friend of their father. This affidavit was sworn on 6-3-10, in the course of the steps that Satya Babu was taking to withdraw the Kumar's Insurance money, and he admits that this was one of the affidavits taken for the purpose, and

not considered wrong. It was among the documents connected with the Insurance, and the payment of the money, and it was one of the six affidavits which the defendants called for from the Insurance Company on 1-12-30 three years before the trial began. The defendants' learned Counsel at first refused to admit it (Vide ord. No. 60 dated 12-3-34 but eventually did so, and the document was admitted as piece of evidence for the plaintiff.

The following is an extract from the affidavit:

"I, Rai Bahadur Kali Prosanna Vidyasagar C. I. E. do hereby solemnly declare that I was for the last 25 or 26 years personally acquainted with Kumar Ramendra Narayan Roy whom I knew from his very birth, that he died aged about 26 years at Darjeeling on the 8th day of May 1909; that his personal appearance was as follows:

Complexion fair, eyes and hair rather brownish;—strong-built average stature".

This gentleman has been described by a witness on the side of the defendants as "Adwitya Pundit" i. e. towering over all in learning, so much so that when a certain letter of him asked the eldest Kumar to see that a word or two of English words might emerge from the tongue of the two younger brothers, and seemed fatal to the case about their English it was suggested that to Rai Bahadur such English as the 2nd Kumar knew was nothing. I shall come to that letter below, but it is obvious that Rai Bahadur swearing an affidavit chose his words carefully and recorded what nobody is more competent to say.

How comes the word 'Gray' then in the doctor's report and how comes it that the defendants who knew its contents as early as July 1921 (Ex. 448, 449, 450) did not make the case of 'gray' but of blue? was there somebody who was translating kata into gray, and did the defendants think, not knowing what the word gray meant that it meant only kata, and might fit the plaintiff? It is true that they deliberately omitted to call for it, and thought it will remain safely lodged in the office at Edinburgh. They were afraid of a certain mark recorded

there, but there was the chance of its coming before the Court, as it did, and they might have got the benefit of the word 'gray' at all events supposing the plaintiff an impostor on their theory, took the fearful risk of calling for it towards the end of the case. It was in Scotland, and none but the Hon'ble Board had seen it after calling for it in May 1921, and then after seeing it in July 1921 it was returned and it went back, and was sent from England towards the close of the plaintiff's case, being called for on 6-1-34, and it arrived by air mail according to the letter of the Insurance Co. and reached the Court on 15-12-34. (Vide papers No. 2400, 2432. 2448 on File D.). Long before all this, on the 5-2-34 was examined for the plaintiff Mr. G. C. Sen, the Agent who was instrumental in getting the Kumar to insure his life. His name is on the Medical report as the person who introduced the Kumar to the doctor, and with full knowledge of this the defendants cross-examined him to shew that he was giving false evidence that he was not the Agent, at all, that somebody, one Mr. Bhar, was the Agent, and that he had made a false entry in his books. The defendants felt secure about the medical report remaining in Scotland, but when it came it was admitted that he was, in fact, the Agent. Now this witness, before the plaintiff knew of the contents of the medical report, deposed as follows as to what had taken place. I am taking it a little short, but omitting nothing:

The witness took the Kumar to Dr. Caddy between 2 or 3 P. M. and introduced him as the Moharaj-Kumar of Jaidebpur. Dr. Caddy salammed the Kumar thus (back of hand touching the forehead). The Kumar nodded in answer (shews a somewhat low bow). Dr. Caddy examined heart, lungs, took his weight, chest measurement forced inspiration and expiration, examined a sample of the urine. Took his height. Then the doctor sat down and began to fill in the medical portion of the form. Then he began to put to the Kumar the questions in the form regarding private history. He put these in English, and I translated, and asked the 2nd Kumar to answer. He answered in Bengalee, and I translated the answers into English for the doctor. Then, the 2nd

Kumar was made to sign under his answers. Don't remember-having taken any other man of his complexion, eyes, and hair.

"After the 2nd Kumar signed, the doctor asked me to look for identification marks. I said: white complexion, grey eyes, and brown hair were enough identifying marks, as these do not occur in a Bengalee".

The cross-examination did not go to this part. There is little doubt that the word "gray" was the witness's word, his translation for *kata*. One little circumstance seems to confirm it. In the medical report what is written is :

"Hair brown fair moustache. Eyes grey"

The words 'Eyes grey' occur after a full-stop, and have faded more than the preceding words, as though these were written a little after the preceding words. The words are genuine of course, but they look written not in the same stretch as the preceding words. I have no doubt that Grey was Mr. Sen's word, not Dr. Caddy's and did not record his perception. In any case, I should prefer the affidavit of Rai Bahadir as a surer ground to proceed upon, and these the word is brownish. "Hair and eyes brownish", are the words, in a solemn document, by a man who knew the Kumar from birth, who managed a vast zamindari, and who was a man of vast learning.

I believe that his description "brownish of the eyes" is the truth. So difficult it is to hide the truth that those who really knew the colour told it when-off the guard. Ashu Babu, the doctor, asked about the 2nd Kumar's eyes says :

"they were pingala, that is bluish colour. Pingala means bluish colour it is not so, but his and eyes were bluish colour pingala is brown, which is Lal Lal (reddish) biral chokhoo, not that, but brown",

Probal Ray, a Naib who appeared very shrewd, and pucca-the kind of man too cool and collected in box to swerve an inch from the case he had come to prove says :

"The 2nd" Kumar's eyes were *kata*.

Q. What sort of Kata ?

A. Can't express it.

"Not like cat's eyes, as these vary. The 2nd Kumar's eyes would not tally with cat's eyes of any kind. The 2nd Kumar's eyes are not kalo (kark), Nor Sada (White), Might be sada compared to something else. One can't call these ektu sada (a little white) without mentioning something by way of contrast or relatively to which they were sada. The 2nd Kumar's eyes were not lalchha, One can call them pingala, not lalchha.

In re-examination he says :

Q. You said. The 2nd Kumar's eyes were not lalchha but pingala, What colour is that ?

A. Slightly nilava (bluish).

To Court : Nilava is called pingala.

It is a travesty. In Sreepur case he has said :—

The iris of the eye is neither black nor cat's eye but a little whitish ", He explains that he meant white compared with the blue of cat's eyes. Many a witness on the plaintiff, side who were calling the 2nd Kumar's eyes pingala were calling it whitish too. One called them narial eyes, suggesting the colour of cocoanut (P. W. 250),

Rai Saheb says that he had seen and noticed the colour of the plaintiff, eyes in April 1921. He noticed that they were brown. When later, this Sannyasi came to Joydebpur again, and declared his identity, and the sister said that he was the Kumar, he thought her honest,

I find that the 2nd Kumar's eyes were light brown the colour of the plaintiff's eyes, and "blue eyes" are one of the false traits deliberately ascribed to the 2nd Kumar to distinguish him.

Feature from Photos..

I have disposed of the colours. I now turn to the features which can be compared with the help of the photos, and the experts who have read them and given an opinion,

There are eight photographs of the 2nd Kumar.

eight exposures-and of most of these are copies and enlargements.

Of the plaintiff there are 16 photographs, leaving aside groups in which he occurs.

For easy reference these may be thus named and arranged :—

2nd Kumar's Photographs.

I Inset photo—Ex. 11

Copies :

XCV11 = x (45) (enlarged)

LXVI x (49) upto bust (enlarged)

IX (Fritz kapp, Dacca, in print at the foot of the card board).

X (278)

LX111 (bust)

XLIV = A of Ganguli

LXXXX 111 = P/10 of Lahore Commissioner

LX1 of Mr. Winterton (taken on 10-5-34) P. W. 788.

LXXX11I = X (47)

11. Tiger photo in breeches—Ex. 1 (10)

Taken in April 1909, as I found above

Copy :

DX. a (2) = X (32)

111 Tiger photo in dhuti—Ex.D,

Copy.

LXXXIX (bust) printed P/6 of Lahore.

IV Bust in Punjabi shirt—Ex. LXXXX P/7 of Lahore

V. Frock-coat—a (18)

V1, Frock coat three-quarter—Ex. a (15)

XLVI, Photo before marriage—Ex. XCVI.

VIII. Photo with Mukhuti (standing figure)

Of the Photographs the 11, the tiger photo in breeches is the latest - it was taken on the day of the shoot a few days before the 2nd Kumar went to Darjeeling. The tiger photo in dhuti was taken after the shoot in October 1908, and seems to be the next before, the insect photo was the next before, looking to the size of the moustache the inset, the tiger

photos, and the frock coat photos, are not far removed in time, nor is the bust in Punjabi. The photo before marriage was taken about 1902 and may be referred to as the Marriage photo. That is the earliest but one. The earliest is the photo with Mukhati taken when the 2nd Kumar was about 14. It is this one which the Rani could not recognise, but Mr. Rankin and Mr. Saradindu Mukerjee could as they had seen him a boy.

Plaintiff's photos.

There is no direct evidence to fix the order or time but it is possible to do so with reasonable certainty, looking to the dress which changed from lungi to the ordinary Bengalee Dhuti, and to the progressively increasing bulk. As to the photos in the old clothes of the 2nd Kumar the evidence is that they were taken in Calcutta after the plaintiff had left Dacca in 1924.

1. Plaintiff in loin-cloth—Ex. a (19) = x (283)
Copies.
a (52) x (212) B of commissioner Ganguly
a (42) = x (473)
11. Gotilla photo— Ex. a (12) = x (37)
Copies :—
a (25) = Ex. C of a Commissioner
= D/2 of Lahore.
111. Standing in lungi — a (36) = S. B. D. 14
Copies—a (41)
- 1V. Seated, in lungi — a (24)—
= D/2 of Lahore commissioner
Copies : a (39) : = S. B. D. 18
- V. Seated on tiger-skin a (51) = L. H. L. (I)
a (37) = S. B. D. 15
- VI. Slender Ex. LVII
- VII. In shawl Ex. a (35)
- VIII. Double-breast coat Ex. LXXXV P/2 of Lahore
- IX. In Shikar coat Ex. XXIV
- X. Bare body Ex. XLIII
- Copy LXXXIV P (1) of Lahore
- XI. Profile XLIX X (288)
- XII. Standing in dhuti, without jata LXXXVIII p/5 of
Lahore

XIII. Plaintiff seated in dhuti, without jata—

Ex. III.

Copies :

Ex. XLVI = C of Ganguli

Ex. XLV = B of Ganguli

(bust only)

Ex. LXV X (48) Purports
to have been taken in London
(enlargement bust only)

Ex. CXII - x (44) Do. Do.

Ex. LXXXVI

X (46)

XIV With scarf and safety-pin Ex. LX

Taken from life Mr. Winterton on 28-4-34

Copies :

XLVII. D of Ganguli

XLVIII E of Ganguli

LXIV (enlarged moustache touched)

LXII (enlarged, hair added).

XV. In old Durbar dress XVIII

Possibly copy : **XIX**

XVI Cut out from a group LXXXII

In order of time the last should come
before XIV which was the latest.

In appreciating the evidence of experts, and in comparing photos certain general propositions which are truisms must be borne in mind.

(1) This was put by Mr. Chaudhuri to Mr. Ganguli (P. W. 544). In a photograph exact likeness would depend upon various factors, such as the adjustment of the machinery, atmospheric conditions, the skill of the manipulator, the correctness of the lens, purity of the chemicals, the angle of presentation to the film.

I give Mr. Chaudhuri's own words nearly his own words I may add that under the best possible conditions exposure remains an uncertain factor.

(2) "The tricks that a skilful photographer and re-toucher can play with the negative under prints comparatively valueless in evidence"—also put by Mr. Chaudhuri.

(3) "When I compare two photos I judge by the eye

I do not see it, but I read it after seeing it. When I see a photo I at once see the proportions of the man. This is the trained artist's eye. Common people also do it, but not with such knowledge. So that actually measuring photos for comparison is useless, and worse than useless, if the photos are on different scales or at different angles."

Mr. Percy Brown, D. W. 8, in answer to Court.

In short a photo reproduces what the eye actually sees, the two dimensions and a few visible signs from which you instantly perceive the object said to be seen or construct the object in the photo. In a photo you may recognise a face no bigger than a pea, or a face half of which is in shadow, and when a witness says he sees the face, there is no sense in asking him to keep to what he precisely sees the half face, or the half-lip a thing which few can do.

(4) I said before that features, taken one by one, may not differ very much from those of another, but their collective effect makes a face unique; and the factor that most contributes to this result is the proportion. In large photographs groups of schools or the like, individual head not bigger than a small pea, are sometimes recognised, though in a head reduced there is no scope for the subtleties of light and shade; so that the individuality seems to principally due to the relative portion of the features.

(5) This does not mean that their relative position is constant. If you lower your face, your chin may touch the neck, the ear is relatively raised, its base will be seen opposite the bridge of the nose, or even in a line with the eye, though its real position usually is, top in a line with the brows, and the end opposite the nostrils; the space between the brows and the eyes is shortened, the tip of the nose is nearer the mouth, and more of the hair is seen. If the face is upturned, the reverse of all this takes place. Where the head is inclined to the right, the left ear is raised higher than the other. In short all this may be called the effect of the tilt of the face in a picture.

The point may be illustrated by a certain matter

which has arisen in this case. In the inset photo of the Kumar (See XLIV) the outer corner of the left eye goes slightly upward, while the same corner (See XLVII) is horizontal or slightly downward in the plaintiff. That was seized upon as a point of distinction, and the case put by Mr. Chaudhuri to Mr. Ganguli (P. W. 544) is that the Kumar's eyes were oblique). This case was put, as Mr. Chaudhuri handed to the witness, an enlarged bust from the full size inset photo, so that it could not be seen how the Kumar was seated in the photo. Mr. Ganguli admitted that the outer corner of the left eye looked upward, and Mr. Percy Brown spoke to that as a point of distinction that the Kumar's eyes were oblique. Looking at the inset photo the full size—one sees that the Kumar sat leaning on a table on his right, with the result that the outer corner of the left eye had gone up. That the upward look is only in the left eye. Mr. Chaudhuri did not mention the right eye is the clue to this result, and Mr. Percy Brown had to admit that this is absent in photo a (x5), for instance. And Mr. Musslewhite (D. W. 56) who deposed after Mr. Percy Brown omits this point of distinction.

Mr. Chatterjee for plaintiff elicited from Col. Pulley an amateur artist, that in the inset photo of the Kumar and the seated dhuto photo of the plaintiff, one point is common to both that the ears are below the level of the eyes—said to be very uncommon, and therefore an identifying mark. Lt. Col. Pulley said it was not uncommon. The thing was the result of the tilt of the face and thus not being exceptional, is not an identifying mark.

(6) The texture of a thing, whether it is flesh, or silk, or the kink, or curl of hair, is reproduced by light and shade. To this is due the sense of the solid. Mr. Percy Brown reading the photo (x49) and the photo X (48), speaks to a distinction that the plaintiff's hair is of the straight variety and the Kumar's wavy. In point of fact I saw the hair of the plaintiff to be wavy, and the curls appear in other photo where the delicate difference of tones needed was achieved.

(7) Lastly, photos taken of the same man, taken at different periods of life, will be recognised by those

who knew him but might appear at first sight, or even after many a sight, to a stranger as not photos of the same man. I discussed this point before. The second Rani, for instance could not recognise the photo of the 2nd Kumar taken when he was 14 (Ex.XL) but Mr. Rankin and Saradindu Babu could. They had seen him then. If Kumar as he is looking in the inset photo had come to Court and any one were minded to deny him, he could be defeated, on the doctrine of first or any number of sights without scrutiny, by this photo XL, or even by the Frock coat-photo, Ex. a (15), which, looking to the size of the moustache, could not be far removed from this inset photo and even by his latest photo, the Tiger photo. A (10). In fact, on the Ex. a (10) the plaintiff would have a better chance. Those who knew the Kumar throughout the period find however no difficulty in recognising him in any of the photos, as to them the common points occur with a sense of familiarity by reason of their image previously left in the mind, unless the image had faded. Birendra Banerjee for instance, says that he would not dream of taking the standing figure in Ex. XL as the Kumar. Plaintiff in his earlier photos is hardly recognisable in his later.

I turn now to the evidence of the experts. On the side of the plaintiff have deposed Mr. Ganguli and Mr. Winterton, and on the side of the defendants, Mr. Percy Brown and Mr. Mussil white.

Mr. Ganguli, P.W.544 who has deposed for the plaintiff is 59 was Vice-Principal of the Government School of Arts in Calcutta and is, by profession, a landscape and portrait-painter. His status will appear from the fact that he has painted the portraits of H. Lady Hardinge, of ruling Moharajas, of Sir Herbert Butler, Sir William Morris, and various other notabilities. His fee for portrait is Rs. 2500 and for a full-size portrait in uniform Rs 7000. As a zaminder, he has an income of Rs. 40,000 to Rs. 60,000 per year. Mr. Percy Brown was the principal of the School in which he was Vice-principal, and he officiated for two years as Principal. The witness is not a photographer, but dabbles, to use his own words, in photography.

He says that in May 1934 he was examined on 30-5-34. One Man Mohon Ray, an agent of the plaintiff, handed to him the two photos—A and B, and asked for his opinion as to the identity, and he recollected that the issue was. Plaintiff saw him on a second visit, and he was told that his identity was being tried in Court. The witness after comparing the photos formed a certain opinion and agreed to depose. He was not offered any fee, but only his travelling expenses, as he was told the plaintiff was hard up.

Now whatever may be the value of Mr. Ganguli's opinion there is no question as to his honesty ; I was impressed by him when he was in the box, and I have no doubt that the opinion he gave was really his, and he does not presume, as Mr. Chaudhuri tried to elicit that he did, that his opinion should rule. He has compared :

1. The inset photo of the 2nd Kumar which is his A (XLIV)

2. Two copies of the photos taken from life in 1934 by Mr. Winterton (his D and E which are XLVII and XLVIII).

3. An enlarged bust from the Dhuti seated photo of the plaintiff (his B being Ex. XLV). The photo from which this bust was made is Ex. III (Vide list above).

4. A copy of Ex. III with the moustache touched to turn up the ends.

In a word, he has compared the present photo of the plaintiff from life, his photo taken about 1925 in Calcutta, and the inset photo of the Kumar when he was about 24 or less. In 1925 the plaintiff was, on his account, about 41.

Mr. Ganguli is clearly of opinion that these three photos are that of the same person in different periods of life.

He says that he formed this opinion not at first sight, but by scrutiny for 45 minutes, and the reasons he gives are these :—

1. Taken, part by part, individually, i. e. the forehead, eye brows, eyes, the shape of the nose, the shape of the formation of the upper and lower lips, and

particularly at a peculiar shape of the ears. with a lump of flesh twisted upward at the tip-ends convince me to come to the above conclusion."

2. In the lower right eye-lid of the plaintiff there i. e. a point of flesh which appears in photo A (of the Kumar) and in Photo B (plaintiff).

3. The character of the chin is the same though it is heavier in D and E owing to the general heaviness of the entire figure.

Touching up the moustache i. e. turning up its ends in his C which I might refer to as the 1925 photo of the plaintiff, he has seen the similarity, the general formation of the lips, and its neighbourhood, including a little of the chin, corners of the mouth, upper lip up to the nose etc.

Mr. Winterton is a photographer by profession, aged 60. He is of the firm Edn a Lorenz, Calcutta. He was formerly Manager of the firm, Bourne and Shepherd, of Calcutta whose present Manager is Mr. Mussilwhite who has deposed on the other side. He had his training as an artist and photographer in Berlin, Dresden, Munich, Paris and London. He compared the photos LX and LXI i. e. the inset photo of the 2nd Kumar, and the latest photo of the plaintiff is that these are photos of the same person at different periods of life.

The shape of the forehead, eyebrows, eyelids, nose, nostrils, mouth and chin, and lobes of the ear, are still the same. Owing to age the hair is much thinner, but it has still the same kink and curl.

Both these experts mention three peculiarities, common to the two faces, which according to them are the same.

These are :—

A. The peculiar shape of the ears.

B. The middle point of the upper lip is not in a plumb line with the middle point of the lower ; the latter is to the right of the line. It may be shortly expressed as a little twist to the right.

C. The point of flesh on the lower eye-lid of both that appears as a point of light on the photos at the same point. Mr. Winterton has observed 4th peculiarity :

D. the middle finger and the index finger of the left hand in both are practically the same length. The experts examined on the other side mention the ear as a point of distinction, deny that (b) is common to both, deny the point of flesh, and say nothing about the virtual equality of the two fingers, and the points of distinction they depose to will be described below after I give account of their qualifications.

Mr. Percy Brown is an I. E. S. (retd.) trained as an Artist in Royal College of Arts, South Kensington, London. Associate of Royal College of Arts, London. Taught Art in England. Specialised in Sculpture. For 18 years Principal of Government School of Arts in Calcutta. Exhibited at South Kensington, Bombay and Simla, author of books on Indian Art. Judge, Fine Art Exhibition. There is no statue made by him and set up in any public place except one in the High Court in Calcutta.

Mr. Musslewhite, Managing Partner, Bourne and Shepherd, Calcutta, trained as photographer in London. Exhibited photographs of his own. Professional photographer.

Mr. Percy Brown compared the inset photo of the 2nd Kumar (the A of Mr. Ganguli) and this enlarged up to bust (X49) and the 1925 photo of the plff. and his latest photo, that is, the same three as Mr. Ganguli, and he gave his opinion with reference to X(49) and X(48) (*i.e.*, Inset enlarged to bust, and the plff.'s 1925 photo enlarged to bust). The cross-examination of Mr. Ganguli was on the basis of these two photos (enlarged from A and B) so that it may be said that these two experts had the same materials.

Mr. Percy Brown gives this list of distinctions:

2nd Kumar X(49).

Plaintiff X(48).

Head,	Forehead,	Skull—	Skull higher and more
Broader.			donical.

2nd Kumar.	Plaintiff.
Hair-form—Wavy.	Straight.
Eyebrows—Fairly horizontal.	Outer ends lower than the inner.
Eyes—Oblique, outer corner higher than the inner.	Horizontal.
Different	
Nostrils—Filtrum and nose.	Narrower and more refine.
Wings of the nose.	Wider.
Lips—Thicker and fuller the lower lip not exactly symmetrical on either side of the axial line.	Symmetrical.
Chin—Fuller and rounder.	
Ears—Different; Lobes pendant.	Lobe sticks out; (where the helix joins the lobe there is a distinct dip).
Jaws—Narrower.	
General shape of the front view—Skull wider than the lower part.	
Puffiness on the upper lid of eyes—Absent.	Present.
Nails—Smaller and narrower.	
The opinion as to nails was given from XLIV (A of Ganguli) and XLVII (D of Ganguli).	

Mr. Musslewhite compared the three photographs—the inset of the Kumar, the 1925 photo of the plff, and the 1934 photo of the plff. and is of opinion that the faces are utterly different.

2nd Kumar.	Plaintiff.
Ears.—(1) Top of the ear in relation to the eyes	

2nd Kumar.	Plaintiff.
higher than in plain-tiff.	Larger.
(2) Position of the ear lower in relation to the eye.	Outer rim of the ear has a depression.
(3) Difference in shape.	Protrusion.
Forehead—Flat.	Flat and broad.
Nose—Sharp.	Flat and distended.
Nostrils—Round.	Flat and distended and bigger, bridge wider, fultrum longer.
Eyes—Brighter, larger, more open, fearless and they speak generally of an open frank countenance.	Narrower.
Eyebrows—Meet closer.	
Chin—Fuller and rounder.	
Finger—Little finger in LXI smaller.	

These are some of the differences he speaks of, and he adds that the man in the inset photo—the Kumar—is more refined while the man in the photos of the plff is gross.

He sees a twist on the right side of the lower lip in the plff, but none in the Kumar. He says the centre of the upper lip is not in a line with that of the lower lip in the plff's photos, but they are in a line on the Kumar's photo (the Inset and its copies).

It will be noticed that for forming their opinion the experts had three photos of the plff and one photo of the Kumar—the inset photo. This has the merit of being one

of the latest, and one in which he is looking his best and so improved that he does not at first sight look to be the same man in his next earlier photos, the two-frock coat photos. All the photos in this case are retouched, as Mr. Musslewhite says, except the three photos of the plff of which little use has been made (XLIX, XLIII, LXXXII). I have, in coming to an opinion checked by these points under inquiry on his photos before the experts, but there is means to check the inset photo of the Kumar except by constant comparison with other photos all equally retouched,—but possibly not at the same points, unless a particular point was a sore point.

In coming to my conclusion I have looked at the photos and considered the opinion of the experts. I agree with Mr. Percy Brown that it is no use measuring this feature and that A photo is not a map. The photos are not all on the same scale and the figures not at precisely the same angle to the camera; and what is more, the two enlargements X(49) and X(48) with reference to which the opinion were illustrated, and probably formed as well, seeing that these two were singled out by the defence in leading their evidence in the examination-in-chief of Mr. Percy Brown, and in cross-examination of Mr. Ganguli, are not on exactly the same scale, and their angle of presentation is not the same. In X(48) the plff is looking straight on to the camera; in the inset photo, the face is at an angle. This evidence of Mr. Winterton has not been questioned. Mr. Percy Brown has said that in Ex. X(48) the man is looking to the lens, and in X(49) the Kumar is looking at the operator. It is no use measuring things, you must go by the eye, as Mr. Percy Brown says, and though he has also said that it should be eye of a trained artist, which is right, seeing that the eye generally sees what it knows, what a trained eye sees an untrained eye can see, if pointed out.

The conclusions I have arrived at I record as follows: (1) there is a slight twist on the right side in the lower lip of both the Kumar and the plff. Mr. Percy Brown sees it in the Kumar on the photo X(49) but not in the lower lip of both the Kumar and the plff. Mr. Percy Brown sees it in the Kumar on the photo X(49) but not in the plff in the Photo X(48). Musslewhite sees it in the plff on the same photo but not in the Kumar. Now that it has been pointed out by Mr. Ganguli, a plain man can see it. Rai Saheb (D. W. 310) sees it on the lower lip of the Kumar in the photo, A(15). He calls it a defect in the photo. On the plff it is admitted. On the Kumar I see it exists. It is not an accident on the photo. Mr. Winterton sees it on the A(15) as well, not merely on the Inset photo in which three of the experts including Mr. Brown sees it. In the 1925 photo of the plainff X(49) the left side of the face is in shadow, and consequently the left side of the lower lip that accentuates the twist on the right, and led to the suggestion by Mr. Chaudhuri to Mr. Ganguli that it was hanging, as if the portion under the shadow does not exist. On the inset photo, the left side is in light, and looks full, but the right side being in shadow, the suggestion was that there was no twist on the right side. You have got to see the lip, and not the portion in light alone, and seeing that, you see the twist even in the inset photo, as Mr. Brown did, and the thing is plain in A(15). The central dip of the lower lip is not immediately under the central dip of the upper, but there is a push on the right side. No tilt of the face would change their relative position. It is a feature common to the lips of both. I am amazed to find a suspicion of this twist in Jyotirmoyee Debi as well (*vide* photo CVIII) if not also in the Chhoto Kumar (Ex. LV).

(2) The forefinger and the index finger of the left hand of the plff look equal in the photo (XLVIII—the

latest 1934 photo). I saw these two fingers. They are not equal, but nearly so, and less unequal than the corresponding two fingers on the other hand.

In the Inset photo of the Kumar these two fingers look equal too, but they do not look equally stretched, I notice this peculiarity in Rajah Kalinarayan (photo XXXVIII). These two fingers, equally stretched, look equal on the photo and it looks probable that the small difference between the two in the plff could alone lead to their look of equality such look of equality exists in these two fingers on the Inset photo, allowing for the degree of stretching. The point, however, is not absolutely free from doubt, and it is impossible to find identity or difference on this point, except that a close scrutiny shews that these two fingers on the Kumar were less unequal than the corresponding fingers on the other hand.

(C) *The ear*.—I agree with Mr. Ganguli and Mr. Winterton that the ears of the plff, instead of being a distinction, are a mark of identity.

They are very peculiar. Mr. Ganguli says that he has not come across such ears in the whole course of his experience. They are large ears. The lobes are not adhesive to the cheek, but pendent, *i.e.*, there is a cleft between the lobe and the cheek; and the outer rim of the ear, what is called the helix—instead of being a curve till it joins on to the lobe makes at this point an angle, a sharp angle; and the lobe sticks out from the cheek. The lobes look bulgy, as I saw them, on the plff in life, and they looked like the lobes on the photos, Ex. I and I(2), as I saw these with the plff standing close to me in the presence of the lawyers on both sides (*vide* record of the observation, dated 27-4-36). The roof of each of the lobes is also bulgy, and makes an angle with the adjacent part of the inner side of the helix, the angle looking; ole a demt. This angle, inside the

ear, must exist more or less in every body, and though I noticed it at the request of the defdts' advocate, it was not put to anybody and can not be studied in the photos. Little of the structure of the outer ear can be compared on photos, and even the two rims of the helix do not appear in all. The outer rim appears in most of the photos.

(1) It is agreed the lobes of the ears in either are not adhesive, but free or pendant, but it is said that on the plff, the lobes stick out, pushed away from the cheek and that the angle on the outer rim does not exist on the Kumar's ears.

In the 1934 photo of the plff, and the inset photo of the Kumar, the left ear is in light. They are the same ear down to the corner, or angle on the top of the helix as it curves downwards. I see also the angle on the outer rim in both. What minute differences exist are due to the different angle at which the two figures sit with reference to the camera. That is obvious if we look at the other photos. Look at Ex. XLVIII an untouched photo. Here the right ear is in light, and the angle on the outer rim of the plff shews, but is not as sharp as in the 1925 photo. Take another left ear in light the one in LXXXII, another untouched photo and also LVII. The left ear is the left ear in the inset photo, the angle on the outer thin in both, and as unsharp in both. Even in the inset photo of the Kumar the right ear, though in shadow, can be seen, and you can see the angle on the outer rim. You notice also that this right ear is in shadow, but the lobe has got into light, shewing it is a facet that caught the light. I see there a little push away from the cheek as in the left ear as well age and fat, or rather fat alone, has accentuated it, perhaps, as Mr. Winterton says, and Mr. Brown concedes, provided there is a great deal of fat, but the angle on the outer rim is there in both. Col. Pulley

saw it on the Kumar's photo [X(45) inset]. After looking at the ears in all the photos of the Kumar and the plff, and looking at the ears in life, and particularly the ears in the two untouched photos I mentioned, I am satisfied that the ears of both are the same, and they are peculiar ears. And I notice the singular fact that the ears of Rajah Rajendra are similar to these (see LIV and XXXIX) as Mr. Winterton points out.

(4) *Two points of light.* Mr. Ganguli and Mr. Winterton point out two points of light, one on the right lower eyelid, in the plaintiff's photo [X(48)] about the centre of the lid, and the other at about the same point on the Kumar's photo (X49). Mr. Ganguli says that he felt curious about this, and wanted to see the plff and saw him on the day he (Mr. Ganguli) was examined and he saw there a tiny point of flesh. I saw a point there too, a section of the lower eye-lid (right) which has a minute dent on either side, and has therefore acquired a certain individuality. I saw the two points of light, as they were pointed out, nearly on a line with the pupil. Whether these two answer to the flesh points it is impossible for me to say. All that I can say, and must find, is that the two light points represent two common points on the plff and the Kumar, and they are in all probability due to the same common flesh point. It is worthy of note that the defendants' experts were asked nothing about the light points. They were asked whether they could see any point of flesh, and Mr. Musslewhite spoke of grains in negatives, and the two points of light were not put to him, whatever the cause nor was he asked if he saw the light points on the photos.

The other points of distinction mentioned by Mr. Percy Brown and Mr. Musslewhite may be disposed of in a few words, except the nose. The nose has been the subject of the fiercest controversy. As to the other points, the general

remark applicable to them is that they arose from a scrutiny into the two photos, the inset and the 1925 photo X(49) and (48) and magnifying the differences due to accidents and difference of age, and the fat, into fundamentals, particularly as both are copies, and on copies tones are somewhat lost, as Mr. Musslewhite said when another photo put an end to one of his distinctions. Taking them *seriatim*; Hair—form wavy in the Kumar—Goes off, as the hair on the plff is wavy, and it appears in other photos.

Eyes. Oblique in the Kumar, the outer corner going up. Not so in A(15) as Brown admits. The explanation of the oblique in the inset photo which was the foundation of this opinion has been given. Mr. Musslewhite said things about the eyes, but not this point. For an illustration of the effect of the tilt, see the figure marked 3 of Ex. I.

Lips. Mr. Percy Brown sees the twist on the Kumar's lip, not on the plff's, Mr. Musslewhite sees the *vice versa*. The twist exists in both. Later Mr. Brown says that the only difference he sees in the two lower lips is that the Kumar's lower lip is a little fuller in the centre. It is interesting to observe that the 2nd Rani was examined before Mr. Brown, and said that Kumar's lips were thin, and a large number of witnesses came and said that the plff's lips are thicker. The lips are the same.

Eye-brows. Bow-shaped, according to the 2nd Rani; are horizontal according to Mr. Percy Brown. Directly he was shewn A(15) he admitted that there—a photo of the Kumar which Phani Babu has deposed is a good resemblance—the brows go down at the ends. There is no proved difference in the eye-brows.

Eyes. As to the eyes Mr. Musslewhite said that those on the Inset photo of the Kumar are larger and brighter and more open. The eyes, as they occur here, do not occur in any other photo of the Kumar, they are in their worst.

in the Tiger photos, Ex. L and A-10. There they look small and sunken, and the reason probably is that the photos were taken in open air, and the eyes screwed up. That is an indication of the sort of thing that happens to eyes in a photograph. As I said, they do not appear anywhere as good as they do, in this Inset Photo, and in the rest they vary too. As to puffiness on the upper eye-lid of the plff Mr. Brown admits that might be due to age. As to brightness you do not get bright eyes at fifty. It is difficult to allow for the difference made by puffiness on the top and wrinkles below. Making allowance for age, and the fat, and the natural changes that occur about the eyes, no difference in the eyes has been proved.

Head, forehead, skull. The opinion of Mr. Percy Brown is that in the Kumar the head is more donical, forehead broader, and the skull wider than the lower part of the face. The opinion does not stand the photo A(15), seeing that to sustain it Mr. Brown had to take two points under the hair on this photo of the Kumar and the reason for doing so is he said that forehead includes the frontal bone, hair, and all but in the case of X(48), he changed that definition of the forehead, and adopted the popular one. I am not satisfied about any difference, under this head, or in respect of the chin and the jaws. Looking at all the photos, and not one I do not agree that the fingers are different. It is not said the fingers are different, but that on the inset and the 1925 photo they are different. The difference is an accident in the photos. In fact, the one thing about which the experts do not differ is the hands. I have looked closely at them. The hands are small and the same. And the throats are the same, with a prominent Adam's apple in each and as to the moustache, the Kumar, it is said would wear it waxed and pointed. This does not occur in any of the photos of the Kumar except the Inset.

In the rest the ends hang downwards. The plaintiff, if he chose, could have turned them up.

Chest. The 2nd Rani says that the chest of the 2nd Kumar was not hairy. The witnesses on the side of the plff says that the Kumar's chest was hairy like the plff's, but that he used to shave his chest. There was no particular reason for saying this last, as there is no photo of the Kumar in bare body. The witnesses who say that his chest was hairy include the sister, and others old Khansama, Provat (P. W. 52), the old Dewan (Rasik Roy, P. W. 907), the old compounder of the dispensary in the house (P. W. 74) and lots of others (P. W. 69), the punkhawala; 49, his personal guard, and others, *e.g.*, 464, 76, 892, 977. It seems the shaving of the chest is by no means an uncommon habit in Bhowal. Jogesh (P. 892) who was at the local school, and used to live at the house of Phani Babu, says that Rasik Roy, Phani Babu, and the 2nd Kumar used to shave their chest, and the suggestion is that Phani Babu did so, as he used to practise wrestling (put to Sagar Babu, P. 977, who speaks to this habit too). Santi Babu, a pleader, whose home is in those parts cuts the hair on the chest. (P. W. 961) and Billoo (P. W. 938) gives a list of the names of people who would shave their chest. He says that Phani shaves his forearms also. Phani Babu admits that he used to shave his chest, but it was for "exercise". The evidence leaves me with the impression that it was by no means an uncommon habit, and seeing that there was no necessity for admitting the hairy chest and giving this detail, if false evidence were intended, I find that the Kumar's chest was hairy too.

Face. It is said that the 2nd Kumar's face was longish, but that of the plff round. Looking to the photo of the plff taken from time to time from 1921, it will appear that he is getting fatter and fatter. The increasing fullness of

the cheeks has made the face less long, but if you allow for that, and if you look to an earlier photo, Ex. VII and even to the untouched bare body photo, taken much later (Ex. XLIII) you see the face longish, and in the latest photo too it is so, if you allow for the fuller chin and cheeks. I do not propose to go through the witnesses who go on repeating parrot like the list of distinctions given by the 2nd Rani, and Mr. Percy Brown. Phani Babu gives the consolidated list as his evidence, where there is a conflict between the 2nd Rani and Mr. Percy Brown, as in the eye-brows and the lips the Rani has prevailed, as the witnesses go on saying that the Kumar's lips were thin, and his eye-brows pencilled and bow-shaped. That in one of the brows were more bushy is disproved by the photos unless you choose one of them, and none of the experts make this distinction.

Feet. These cannot be compared from photos as there is no photo in which the Kumar is in bare feet. It has been proved that the plaintiff's size for shoes is six. His shoes—those he was wearing at court—were put in, and a Chinese shoe maker proved the size of the shoes which he had made for the plff. This evidence has not been questioned. The size of the Kumar's shoes was six, as put to Mr. Ghosal in Calcutta. Dr. Ashutosh Das Gupta mentions a point about the Sadhu's feet not present, so he says, in the Kumar's feet. He says that toes of the plaintiff have an inward curve. One sees something like that in some of the photos of the plaintiff, but nobody else has said that it was not in the Kumar, and the point was not mentioned, or suggested by anybody else, much less argued. No difference in the feet has been proved.

The nose. The controversy has raged, as I said its fiercest about the nose.

It is worthy of note that the plaintiff forwarded with

his memorial one of the Shikar photos in which his nose looks fairly thin, and one of his distorted photos in which the nose is broad and hideous. I am referring to Ex. A-10 and the Ex. 12. The distorted photo is one of the three copies which Jyotirmayee Debi described as the photos in which he is looking like a guerilla. These are: A 12, A 25, A 35—those put under the class: Guerilla photos. It has not been disputed that they are distorted photos, due to a short-focus lens, and the plaintiff does not look like them, though Mr. Chaudhuri at one stage of the trial was using one of those—the A (12) or X (37) for putting to the witnesses to bring out points of difference, and observed upon enquiry that it was a correct representation of the plaintiff's appearance. ((*Vide* order No. 498, dated 12-5-34). It was nothing of the kind, as one can see it, and the defendants' experts did not dispute the explanation of the distortion that was given by Mr. Winterton.

Now, if any one were minded to show an obtrusive difference in the nose, and the want of identity one would put the Shikar photo of the Kumar and the A(12) side by side, but the plaintiff or his advisers sent up this with the memorial though one would suppose that an impostor would take good care to retouch into maximum resemblance.

Now, as to the nose Jyotirmayee Debi says that to her it seemed the same when the plaintiff came but some people said it was fatter, and it is fatter now because he has grown fat. I do not know whether the nose, like the eyes, is immune from fat, but looking to the photos of the plaintiff taken from 1921 when he had jata, down to the latest taken in 1934 I find it was broad in 1921 also, and what is more, that is getting broader and degenerating. Except in the two Tiger photos (Ex. L) and H(10) where the Kumar's nose looks thinish, his nose is broad enough in other photos; see LXXX (one of his latest) A(15), any of the

inset photos, the photo taken when he was 14, (Ex. XL), and even the earliest photo where the figure marked 3 is the 2nd Kumar (Ex. I). In these the nose is not very broad but broad enough as broad as the plaintiff's or almost so. Compare LVII (plaintiff when he was slender) and XLIII (plaintiff's untouched photo and CLIX), another untouched photo of the plaintiff with Ex. LXXXX (Kumar) or any photo of the Kumar other than the two Shikar photos, which are, like the rest of the photos of the Kumar, re-touched, and in which the nose must have been retouched looking to the other photos of the Kumar. Now, though, in point of broadness, the difference is not conclusive on the photographs, and would not be on firm ground in view of the re-touching, there is a difference in shape, judged by the photographs alone, and trifle excess in broadness judged by photographs alone, and scrutiny shews the difference about the nostrils, and the wings, although it is known that the desire to make the face light leads to re-touching and the loss of the half-tones, and the consequent blurring of the outline, and if a face is taken straight on to the camera, more of the nostrils and of their holes would come in, than if it is taken at an angle. Despite this observation of Mr. Winterton, and bearing in mind that a nose should be seen in the profile—there is no profile photo of the Kumar but there are two at least of the plaintiff (*vide* list above). I do see a difference in the nose judged by photos, and some witnesses on the side of the plaintiff have said also that the nose struck them a trifle more fat than it used to be. If the court could say that the nose is a different nose it will displace all the direct evidence of identity, honest or dishonest, but the plaintiff's case came to be, as indicated by Jyotirmayee Debi, that some people thought that the nose was a little more 'mota,' that if the court found it different, the difference was caused by nodes

on the nasal bone, the result of syphilis he had before he went to Darjeeling. This case looked very suspicious, but the plaintiff has been examined by three eminent doctors, two of whom were examined by the defendants, and the third by the plaintiff, and they agree at least in this that on the right side of his nasal bone there is a bony growth. Col. Chatterjee for the plaintiff says there is more, and the cause is Syphilis. Col. Denham-White and Major Thomas for the defendants do not agree as to the cause, but they have no opinion as I shall shew presently, what else it is. I consider after examining the evidence of the three doctors that it has been proved beyond doubt that the plaintiff had syphilis, just as the Kumar had, and this has caused the bony growth called a node, and other changes on the nose, and so long as that explains the difference in the nose, as a thing that occurred after 1909, it cannot outweigh the rest of the evidence including the mark on the insurance doctor's report of which the defendants were so afraid, and which the plaintiff called for from Scotland, as the defendants did not do so. I would deal with the change in the nose when I deal with the Syphilis, and the syphilitic marks on the plaintiff and that should be done under the next heading.

The marks on the plaintiff.

The marks actually found on the person of the plaintiff are these:

(1) The dorsum of the feet (both feet), *i.e.*, the skin on the top instep at, and about the ankle, is rough, thickened and scored.

(2) The mark of the healed abscess on the head, a triangular area on the scalp, whose exact position I shall mention.

(3) The left upper first molar tooth is broken, except for a small portion of the outer shell, projecting from the gum 5 m.m. high.

(4) An operation mark, left, according to the plaintiff, as the result of an operation of what he called a *bagi* that followed the primary sore of syphilis.

Its exact position will be mentioned below.

(5) A mark on the right arm referred to as the "tiger-claw mark".

(6) The mark of healed boil—that is agreed as between the doctors,—5 m.m. long, one inch to the right of the spine on a line joining the two posterior iliac spine.

It may be referred to as the boil mark on the back.

(7) An irregular scar over top of the left outer ankle.

(8) A minute mole on the dorsum of the penis.

(9) A cyst under the tongue.

The plaintiff deposed to these marks during his depositions and mentioned also his syphilis and added that he had syphilitic sores on his arm, and legs, before he left for Darjeeling, which last has, as regards the Kumar, been admitted. The above nine marks the plaintiff shewed in Court except "the *bagi* operation mark," and the mole on penis. These were all seen by the three doctors I mentioned, and also the boil-mark on the back which the plaintiff could not shew correctly—its exact position at Court, obviously because it was on his back.

These marks, all of them, were shewn to the doctors by the plaintiff himself though the doctor's written notes do not mention it, but Col. Denham-White mentioned it at Court.

(10) "Syphilitic marks." Besides the above (1) to (9) marks these are in the doctor's notes certain marks, also shewn by the plaintiff, as marks of healed syphilitic ulcers, including the alleged node or nodes on the nose, shin-bone and sternum. These may be referred to as "syphilitic mark". The Kumar's body did not bear these marks though it bore the ulcers, until his disputed death,

but the case of the plaintiff is that these were left by the ulcers that healed, except that the nodes were produced by the same cause that is latent. I would deal with these marks as (10) "syphilitic marks".

(11) Three vaccination marks, seen by the doctors.

(12) A mark of piercing on the lobe of each ears.

(13) The words "*Dharmadasda chela naga*" tattooed on his left forearm in Urdu. The plaintiff says that this was tattooed on his arm during the period he was with the Sanyasis. Mr. Lindsay says that the plaintiff shewed it to him, and said it was the name of his Guru. The words mean, "Naga, being the chela of Dharmadas," or "the chela Naga of Dharmadas" I shall discuss the meaning later. After the plaintiff mentioned the marks which he said were on the 2nd Kumar, and shewed such of those I mentioned, he was asked in cross-examination, when he was narrating what took place on the 4th May 1921—the day on which he declared his identity;

"Is it not a fact that the marks on your person were seen, and it was given out that these were on the 2nd Kumar. And as to the syphilitic marks which he shewed at Court.

"Q. I tell you that the marks you shewed as syphilitic marks are not marks of syphilis at all?

And he was cross-examined to shew that he knew nothing about syphilis, much less have it.

Now, when Jyotirmayee Debi spoke to the marks in her examination-in-chief not the syphilitic marks or the vaccination marks or the cyst, but the rest that is to say all, except the after-acquired marks and the vaccination marks she was asked the same question.

This was in June 1934. The case of the defendants was that none of the marks on the plaintiff were in the 2nd Kumar at all, that these were noticed on the 4th May, or

thereabouts, and began to be falsely imputed to the 2nd Kumar. In a word, the sister saw the marks on the plaintiff, and put them on the Kumar. It is nobody's case, and never became the defendants' case, that any of the marks were manufactured.

I now proceed to deal with the marks as follows:

Irregular scar over left outer ankle.

The plaintiff shewed this mark at Court in December 1933 and said that this was due to a carriage wheel passing over his leg.

It was put to him, as I said, this mark of his was being falsely imputed to the 2nd Kumar, and the witnesses who were speaking to it, or to the accident, or to the fact that the 2nd Kumar was limping on crutches at the time of the Chhoto Kumar's marriage—that was January 1904—were being cross-examined to shew that they were giving false evidence. The evidence of the plaintiff is that some 6 or 7 days before this marriage of the 3rd Kumar he had an accident in the stable, the wheel of the phaeton passed over his left leg, and he was moving on crutches on the wedding day, and this accident has left the mark. Jyotirmayee Debi did not see the accident, but says she saw the wound, that it was bandaged by Trailakya doctor and Nishi doctor. She cannot say how long it took to heal, but indicates days. She was minutely cross-examined, and the object was to shew that she was giving false evidence.

All this was taking place until the insurance doctor's report arrived. Before that the plaintiff filed a petition asking me to note that the learned Counsel for the defendants while questioning the accident would not state whether the 2nd Kumar had a mark there at all, whatever the cause, and the defendants thereupon filed a petition stating:

"That the case for the above defendants has always been that the late Majokumar had no carriage accident in which the wheel of the carriage passed over his ankle, and that further had not the mark which the plaintiff has shewn on his ankle." (Filed on 3-9-34 in answer to petition filed on 27-8-34.)

This was hedging, and it continued until the insurance doctor's report arrived. In that connection the following dates are important :

4-5-21 plaintiff declared his identity.

10-5-21 Board of Revenue calls for insurance papers at the suggestion of Satya Babu who had seen Mr. Lethbridge before the 9th May on which appeared his letter to the *Englishman* (8th May was a Sunday).

(Ex. 450)

14-7-21. The insurance papers including the original medical report sent to Board of Revenue (Ex. 450).

15-7-21. The above returned to the insurance office.

1-12-30. Defendants call for six affidavits out of the insurance papers—the two affidavits of death, two affidavits of cremation, and the two affidavits of identity of the man dead (paper No. 64 of D file).

8-12-30. The Calcutta Branch of the Insurance Office send only two affidavits of death, and say that the rest were in their Head Office in Scotland.

10-12-30. Defendants call for the rest—*viz.* the other four affidavits.

19-1-31. The other four affidavits arrive.

6-10-34. The plaintiff who had tendered the two identity affidavits aforesaid called for the medical report (paper No. 2400 of File D).

29-11-34. Plaintiff prays that the report may be called for from Scotland or from the local Branch (paper No. 2340 of File D).

29-11-34. The Manager for the Calcutta Branch writes that the paper was in the Head Office in Edinburgh.

15-12-34. The medical report arrives with the original proposal form.

This document contains the personal details of the assured, *viz.*, the Kumar. And among the details on a printed form over the signature of Dr. Arnold Caddy, and against the column No. 5 for identifying marks occur the words:

"irregular scar over the left outer ankle"

Dr. Denham-White, examined for the defendants, says that the scar under inquiry he would describe as irregular scar over the left outer ankle.

In his notes he thus describes it:

"Irregular scar over the top of the left outer ankle".

"The top is 1½ centimeters wide. The bottom is 9 m.m. wide. Height 2 centimeters exactly. The bottom point is 6 centimeters above the outer malleolus. "It looks like this, according to a sketch made by Major Thomas for the defendants."

In his deposition Col. Denham-White says:

"If I were describing the mark I would describe it very much as I describe here." Its position has been indicated in a useful picture on which all the marks, their positions are indicated [Ex. A(40) and A(40A)].

The description on the insurance doctor's report fits the mark of the plaintiff's person—"the irregular scar over the left outer ankle".

It is agreed on all hands that it is a scar, and not a mark. In his notes Dr. Denham made a distinction between a mark and a scar, and that advisedly, as Major Thomas says: Scar tissue as Col. Denham-White explains, is fibrous tissue without hair follicles, and non-vascular, with a mini-

num of blood-supply. Col. Denham-White says that this scar is very faint, and if he were the insurance doctor he would look for something more prominent. It is agreed that a scar tends to fade, and it is agreed also that in April 1905 the 2nd Kumar had no other mark to choose. It is nobody's case that he had syphilis in 1905, or that it escaped the doctor much less that he had any ulcers or their marks, or that this is a syphilitic mark.

There can be no doubt whatever that this is the mark—This mark on the plaintiff was seen by the insurance doctor on the 2nd April 1905 when the Kumar appeared before him unless anything displaces the identity of the man.

The defendants had good reason to be afraid of the medical report; this fear is some proof of its identity. Look at what happened after it arrived. Before its arrival many witnesses had spoken to the fact that the 2nd Kumar was limping on crutches at the time of the 3rd Kumar's marriage (P. W. 15, 34, 71, 2, 15, 71, 211, 959, 454, 806, 907). These did not see the accident. Ganga Charan, the old Nazir of the Estate, says that he heard of the accident, while he was at Baradalan, and ran, found the 2nd Kumar stanching the blood with his hand. The witness tore the cloth, and made a bandage. The old Compounder, P. W. 74 says that the 2nd Kumar took medicine from the dispensary, and got the wound washed by servants, and nobody treated the thing. The old Khansama, P. W. 48 saw it too. It is no use going into the evidence, or closely look at discrepancies in so small an incident, so long it is perfectly clear that the 2nd Kumar had an irregular scar there, and there was nothing to prevent the sister from giving the true cause, if it was not the carriage wheel. For, the defendants have no case, and no witness on their side says, not even Phani Babu, how this mark on the Kumar which could no longer be denied came into existence. The evi-

dence on that side was in this form: he was not limping at Chhoto Kumar's marriage, and it is not true that he met with a carriage accident. Mr. Chaudhuri said properly that if he could displace the cause, he would displace the mark, but he had no case as to the cause. The doctors do not suggest any other cause such as syphilis, its shape would exclude that, and that would be falling from frying pan into the fire. Now the only witness on the defendant's side who says anything about this mark is the Rani—the 2nd Rani.

After the medical report arrived she had to admit a mark there and this is what she says:

Q. Did you notice any marks on his body?

A. None, except what I looked like a cut mark on his leg—left leg, slightly above the left ankle—joint on the outer aspect, on the outer side of the leg.

Q. What sort of mark was it?

A. "Slightly whiter than his complexion and slightly raised above the skin."

Her evidence is that she found this mark on him at his marriage. In cross-examination she was asked whether the 2nd Kumar was limping at Chhoto Kumar's marriage. Her answer was:

"I don't remember that the 2nd Kumar was limping at Chhoto Kumar's marriage. As far as I remember he was not limping."

Q. "Can you swear he was not limping?"

A. Can't say definitely, as I don't remember.

The lady had felt that the ground cut away from her feet as she was shewn by a letter written to her by her elder sister, Malina, on the 7th Falgoun, 1310 (19-2-1904) which says, among other things:

"We are all glad to hear that Ramendra's leg has healed". Chhoto Kumar was married on the 24th January,

1904 (*vide* Chhoto Rami's evidence). No doctor would describe a cut as 'an irregular scar'.

I find that the irregular scar on the top of the left outer ankle of the plaintiff is the scar which the insurance doctor saw if other facts point to the identity, and no other fact displaces it.

I should note here that a certain doctor examined by the plaintiff thought, because of a discoloration, that there was a connection between this mark on the outer ankle and a certain mark above the inner ankle, the mark No. 6(v) on the doctor's notes a disputed syphilitic mark. The plaintiff did not say this latter had anything to do with the carriage-wheel mark, and pointed out the former as the guma-mark. The defendants filed a petition pointing out that this is precisely what he had done that he did not connect the two marks. It was not his case that the two marks were the result of the accident, but the mark over the outer ankle alone, and this last alone he had pointed out during his examination-in-chief, and during the examination by the three doctors who at my instance, and in view of what the young doctor had formerly thought looked at the two marks again, and agreed in their observation that there is no sort of connection between the two.

(b) *The scaly feet.*

I use this short phrase for the condition of the skin on the plaintiff's instep (upper part of the foot) and on and over his ankles. This occurs in both feet.

Lt-Col. Pulley, D. W. 1, who is not a doctor saw the feet at court and says 'The skin on the top of the plaintiff's instep I find rough, and scored, and tough'.

Lt.-Col. Macgilchrist, I.M.S. (retd.) a doctor of great erudition and experience. I shall have to mention his full qualifications below—saw this condition of the skin, and his

evidence is that this condition of the skin which he had seen on the plaintiff rough, thickened and creased,—is called ichthyosis or fish skin, and he is of opinion that it is hereditary.

Col. Denham-White for the defendant had seen the thing and says: "He has a curious condition of the skin over the ankle, and dorsum of the feet—both feet—and it would be quite right to call it instep." Asked what it is, he says: "I think it is a condition of hyperkeratosis. It is a thickening of the superficial layer of the skin. It is possibly due to a deficient endocrine secretion, possibly thyroid. I and Major Thomas were discussing it and came to this conclusion."

Whatever its etiology—I think Col. Denham-White does not go beyond a conjecture—it is there—this thickened, rough, scored, skin on the dorsum of the feet, and the ankles. The plaintiff says that he, and the Chhoto Kumar, and Jyotirmoyee Devi, and Kripamoyee Devi and Buddhu and Jyotirmoyee Devi's daughter, Mani, had this peculiarity—and the survivors still have got this sort of scaly feet. He was not cross-examined on the point for the obvious reason that one witness had admitted it before the trial had begun, though later this was questioned, in faint-hearted manner, until the point seems to have been given up as no witness on the side of the defendants denied it, and one other witness admitted it. I shall presently mention these two, and the single witness examined before the trial, on commission, who was made to deny it—is Phani Babu's sister—but Phani Babu himself, in fact, nobody came to deny it at the trial. On this scaly feet of the 2nd Kumar have deposed many witnesses. Jyotirmoyee Devi says that her father, and Kripamoyee Devi and the 2nd Kumar, and the Chhoto Kumar, and she herself, and her son, Budhu, and her daughter, Mani have this sort of thing. I saw her

instep and the ankle, and found the skin there very clearly scored, not smooth to the touch, akin to the feel of a file. I noted this, at the time, in her deposition. Jagadis, a pleader, examined in commission for the defendants admitted in cross-examination that the skin of that kind was on Budhu, 2nd Kumar, Jyotirmoyee, and Chhoto Kumar, and the plaintiff; it was like "the hide of an elephant." Dr. Ashutosh Das Gupta, (D. W. 365) admitted it. Two other witnesses go near doing so (D. W., 41 and 324). Saibalinī, Phani Babu's sister remains the sole beginning of an attempt to deny the thing, and even she admitted it in Jyotirmoyee Debi to the extent possible for an opponent's witnesses to do. Mr. Chowdhury did not refer to this point during his argument. The evidence of numerous witnesses on the point, servants, or relations, or people, who knew the family intimately remains un rebutted (P. W. 15, 21, 34, 40, 48,, 51, 52, 61, 64, 5, 89, 62, 66, 67, 74, 167, 387, 657, 806, 888, 907). I notice that Mr. Narendra Mukherjee, the retired Civil Surgeon, too noticed this in Jyoti, 2nd Kumar, and Chhoto Kumar. I find that the 2nd Kumar had this fish-skin on his instep and ankle, just as the plaintiff has it, and that the Rajah and the other persons named by Jyotirmoyee Debi, including herself, had or have it too. It is a thing running in the family. "Roughness in the skin in the ankle-joints is a peculiar feature of the members of the Bhowal Raj with the exception of Bara Kumar and Indumoyee" says Dr. Ashutosh Das Gupta (D. W. 365).

(c) *Ears pierced.*

The plaintiff did not mention this as an indentifying mark but Mr. Chowdhury elicited in cross-examination from Kumud Goswami (P. W. 35), brother's son to Satyabhama Debi, and brought up at the Rajbari, that the Kumar's ears:

had been pierced. He put the same inquiry to Mr. Sen, the Life Insurance Agent, but Mr. Sen did not remember it. The object obviously was to get a negative, but the positive answer remains, and nobody denies it. The plaintiff's ears do bear the marks of being pierced. These are not, I imagine, very exceptional things but I do not think they are practically universal like the vaccination-marks.

(d) "*Syphilitic Marks.*"

It is not agreed that the marks coming under this head are syphilitic, but the marks said to be so have been seen, and these have been described in Dr. Denham-White's notes, and are the items No. 2 and 6 on his list, and also the item No. 10, though one thing under this item is not an agreed observation.

An order passed by the Court with the consent of the parties, and the agreement was that the plaintiff would be examined by a doctor on the side of the defendants, and by a doctor on the side of the plaintiff, and that if they differed in their observations, or their theories, the plaintiff would be entitled to call their doctor.

The plaintiff was examined by Lt.-Col. Denham-White, I.M.S., retired and Major Thomas, I.M.S. on behalf of the defendants, and by Lt.-Col. K. K. Chatterjee on behalf of the plaintiff. The 3 doctors examined the plaintiff at the same time, and as to these alleged syphilitic marks they have differed in their opinion, and in some respects, in observation also.

Col. Denham-White, L.R.C.P., M.R.C.S., M.B.B.S., (Lond.) is a retired member of the I. M. S. He was for three years resident surgeon of P. G. Hospital in Calcutta and was in 1922, Professor of Surgery at the Medical College in Calcutta. Otherwise, he served as Civil Surgeon in the Districts.

Major Thomas, I.M.S. is a Civil Surgeon still in service. Both these learned doctors are doctors of experience, but neither is a specialist in syphilis, though either must have come across cases of syphilis in the course of their general practice, and Major Thomas had 6 months in a venereal hospital in Manchester before he came out to India.

Lt.-Col. K. K. Chatterjee, F.R.C.I. for the plaintiff is a fellow of the *Royal Society of Medicine* in London; Fellow, State Medical Faculty of Bengal; of the Royal Society of Tropical Medicine; Member, Bio-chemical Society of London. Took his degree in 1907, and in connection with his special subject, worked in Woolwich Hospital in London for Venereal Diseases under Col. Lambkin. His special subjects were surgery, tropical surgery, and venereal diseases. Formerly Surgeon at Government Medical School at Calcutta, and later its Superintendent; as such, he retired from Government service. Now senior Professor of Surgery at Carmichael Medical College. Author of books on operative surgery, on tropical surgery, on pathology, on syphilis with special reference to the tropics. Did research work in Syphilis in India under Indian Research Fund, with a special grant from the Government of India; made research to find a salverson without toxicity. In 1926 opened a discussion on a paper read in London by Sir Thomas Cary Evans on topics including venereal diseases. Practises surgery and venereal diseases in Calcutta, among Indians and Europeans. It has not been suggested that he is not a venereologist; and the senior most venereologist in Calcutta as he claims to be.

The procedure observed by the 3 doctors in examining the plaintiff was this: Each of the doctors took his turn in seeing the marks, and then Lt.-Col. Denham-White dictated the description of the marks as he saw them, and the

other two doctors took it down. The notes as taken down—by Major Thomas and those taken down by Col. Chatterjee have both been put in. As records of observations, the doctors do not differ except in respect of certain points only as to which Col. Chatterjee differs, touching the “syphilitic marks” but they differ as to their cause. Nobody says, and the notes do not shew, that the dictated description included diagnosis or etiology.

Col. Denham-White proved the notes taken down by Major Thomas as his evidence. These are at the end of his deposition, and I prefer it to the typewritten copy furnished, as this shews some change.

Now the suggestion to Col. Chatterjee was that these notes dictated by Col. Denham-White, and taken down by the other two doctors, were “the agreed result” of their joint observation. Nothing more untrue could have been suggested, and later it was forgotten, and withdrawn. The examination took place in the presence of lawyers on both sides, except the examination of the private parts. Col. Chatterjee says, and his notes confirm him, that he took down what Col. Denham-White dictated—not word by word, but after grasping dictation and added his own observations, and said there and then that he was doing so, expecting that they would compare notes, and hold a consultation afterwards. At the end of the examination he proposed to hold a consultation as doctors do, but this was prevented by a Pleader for the defendants, as not within the order. He was asked;

Q. I put it to you that what was dictated was the agreed result of the observation of all three?

A. No. There was some little difference for which we wanted to meet.

Q. I put it to you, you never raised any objection to what was dictated.

A. That's not a fact.

Q. I put it to you that before the notes were dictated all the discussion had taken place?

A. Yes, and my disagreement mentioned. I told them I was putting down my differences, and shewed these at places to Col. Denham-White.

Q. I put it to you, you never did?

A. That's a lie.

All this although Major Thomas had admitted that Col. K. K. Chatterjee wanted to hold a consultation, but this was not allowed; and although afterwards Mr. Chowdhury asked:

Q. I am putting it to you that the conference did not take place as you and Mr. Surendra Mukherjee suggested that lawyers should not be present.

It is plain that Col. Chatterjee added his own additional observation to his notes then and there, wanted to compare notes and this was prevented, though it was within the spirit of the order. Here the opinion of experts is going to be evidence, it can be reached after consultation, as all opinion of a number generally is, and it could not have been—feared that Col. Chatterjee would convert the other two by his authority, and if he did so by his congency, nobody could complain.

(d) (1) Now the marks under dispute are these:
Item No. 2 on the notes:

"Node on the nose."

A swelling on the right side of the bridge of the nose nearer the lower edge of the bony portion of the bridge than the upper, it is just above the cartilaginous juncture. The outline is indefinite. 7|16th of an inch in diameter roughly, fixed, and bony origin.

This is Col. Denham-White's dictation. As an observation, it has not been disputed.

Col. Chatterjee adds as his observation:

A similar, but small swelling on the left side of the bridge snaffles, due to rhinitis *i.e.*, chronic inflammation of the mucus membrane of the nose; leucoplakia; thickening of the septum nose; a slight saddle-nose, associated with palates arch high. These terms have a plain meaning and will be just explained.

Item 6 of the Notes—"Gumma Marks."

There are six such marks or scars on the skin which will be dealt with below.

Item No. 10 "Nodes on the skin—bones."

and on manubrium sterni or breast-bones.

These, *qua* observation, are disputed, except that the thing observed in the breast—bone is admitted, but not its causation or nature.

To appreciate the evidence of the experts it is necessary to state certain facts as to which there is no dispute, and a few words about syphilis collected from the seven doctors who have deposed in this case, and who have said something, or other, on the subject, and from certain authorities, cited before me, notably David Less' "Practical Methods in diagnosis and treatment of Venereal Disease." No part of the account that I am going to give of the disease is disputed, and it will be limited to what is necessary for this case.

It is common ground that the 2nd Kumar had on him gummatous ulcers in May 1909 when he went to Darjeeling. He had such ulcers in—December, 1908 when he went to Calcutta for treatment. Phani Babu for the defendants says that he has syphilis some three years before April, 1909, and that he had this gumma or ulcer about a year and a half before that. Now it may be taken that he had no



Plaintiff at the time of Institution of
the suit.

syphilis when the 2nd Kumar passed the Insurance doctor in April, 1905. He got the infection therefore, between that and November, 1907 when the ulcers appeared. It is not necessary to fix the exact date on which he caught the infection, but it looks as though he had got early 1906, as the usual time for the gumma to appear is 6 months to 2 years; usual in the sense that it is the average course in intricate cases. Early 1906 could not be far wrong, seeing that the old Khansama Protap says that the attack began when the Rani was living. In December 1906, 2nd Rani was taken to Calcutta for treatment, and Indumoyee in a letter which I mentioned above was assuring the Rani Bilasmani that her blood had not been poisoned, and we know that the Rani died in January 1907. 3 years before Darjeeling would seem to be approximately the correct beginning of the diseases.

For syphilis there is now a specific remedy, called Salverson discovered by Elrich in 1909 and put into the market in 1910. (David Lees, page 155, Ed. 1931). The 2nd Kumar had not the advantage of this remedy to which the disease rapidly yields, that in a case, properly treated, a gumma rarely occurs, but even in his time there were remedies, such as mercury, so that the fact that the gumma appeared at all, is proof that the 2nd Kumar was not properly treated at all. It is agreed however that about his elbows and on his leg gummata did appear, and the question is whether the marks on the plaintiff have been left by these, and whether another relic of the disease is the nodes, and a further question is whether the plaintiff had, or had not syphilis, a question which was in the mind of the doctors, though this general question was not expressly in the order, Major Thomas says "We were confined to marks on the petition and other observations to confirm or refute the question of syphilis":

Syphilis is acquired or congenital. In acquired syphilis the causal organism, called the *spirochæta pallida*, is conveyed from individual to individual by contagion. The initial site of the infection is usually in the genital tract. It begins as an abrasion, which soon becomes a papula, and then a characteristic ulcer, dull, painless and eroded. The initial sore is called chancre. One effect of it generally is that the nearest lymph glands swell, and harden, and these, the inguinal glands feel like a round India rubber ball. This is the sphilitic bubo. It does not suppurate unless infected by a secondary germ, but such suppuration is not uncommon.

Until the virus gets into the blood stream, the stage is said to be primary. As it gets into the blood stream, it is generalised and gets upon what is called the secondary stage. This is not well marked off from the tertiary stage, but the manifestations that follow immediately upon the primary stage are eruptions, or rashes, or other forms, not strictly gummata. These tend to pass off, and one mark of these is that they are often symmetrical and tend to pass.

In the tertiary stage occurs the gumma, among other things, and this stage has no limit. The gumma may occur anywhere, under the skin, on bones, on liver, or any other organ. No tissue is immune. A gumma near the skin begins as a subcutaneous nodule. It may heal inside, and leave no scar, but a pit on the skin. Or it may resolve, and it skins in, and the result is the gummatous ulcer. It is a characteristic ulcer with a punched out edge, and grey sloughing floor. When it heals it leaves behind a scar. The point is whether the marks which the plaintiff shewed as gumma are such scars.

Apart from the skin gummata, there may occur other gummatous changes early, or late. Among other places,

these may occur on the tongue and on bones. Among other things a node may form on a bone, and this may ossify. This bony growth is shortly referred to as a node.

One thing about skin gummata is that, unlike secondary syphilis, they are symmetrical, and take the form of circles, or segments of circles, or combinations of circles.

This brief account I have collected from the experts and the authorities cited before me, and the reference will be given when I come to passages that assist the decision.

I consider now the evidence touching the (1) disputed nodes and the (2) the gumma marks.

The disputed nodes are the items 2 and 10 of Dr. Denham-White's notes. What the three doctors observed are: a bony growth on the right side of the bridge of the nose, just above the cartiliginous juncture, and a thickening is probably on the fascial layer, *i.e.*, not adhesive to the bone, and therefore, not a node. Nor do they see any bony growth on the left side of the bridge of the nose as Col. Chatterjee does.

Now what is this admitted bony growth on the right bridge?—Lt.-Col. Denham-White and Major Thomas have really no opinion as to what it is except that it is not syphilitic. In his examination-in-chief Lt.-Col. Denham-White calls it traumatic, *i.e.*, caused by a blow, or injury. In cross-examination, he says, he cannot give its age, it is not recent, certainly. The blow must have been, he says, very hard. There is no scar. It might be congenital, he says. It might not be so, he says again. It might be subperiosteal hæmorrhage followed by ossification. Eventually he says it is not periosteitis, but exostosis due to *whatever cause*, fracture not excluded; and exostosis means a bony projection in the nose. That is to say, he states the phenomenon as its explanation, excluding the congenital theory which he had thrown out as bare possibility.

Major Thomas says that it is difficult to say what it is, but it is either an abnormality in the nasal bone or the remnant of an injury to the nasal bone, or exostosis. That is exactly what was passing through Lt.-Col. Denham-White's mind. Till he arrived at exostosis due to "Whatever cause, fracture not excluded." He adds, in effect, syphilis not excluded, for he says that if the plaintiff had syphilis, you could not help connecting the two in your mind, though the situation is an unusual one.

Col. Chatterjee is definitely of opinion that it is a syphilitic node. It is the opinion of the specialist. On the other side, there is no opinion, except a bare negative, and without a reason for ruling out syphilis. For Lt.-Col. Denham-White's reason for ruling out syphilis is that if it were syphilis he would expect it to grow, and that the situation is an unusual one. Nobody knows that it is not growing. As to the site, Col. Chatterjee says it is neither usual, nor unusual. The following passage occurs in 'Thomas and Miles' "Manual of Surgery" cited before me. "The bones specially affected by gummatous diseases are: the skull, the septum of the nose, the nasal bones, the palate, the sternum, the femur, tibia, and the bone of the forearm" (p. 472, 8th Ed., Vol. 1, Chap. IX). David Lees says that no tissue is immune (page 51) though he says on page 101 that the common sites for a node are the collar-bone and the sternum, the ribs and the tibia. There is nothing to rule out syphilis and that it is syphilis may well rest upon the opinion of Mr. Chatterjee but it need not so rest. There are facts to shew that the plaintiff is an old syphilitic individual, as Col. Chatterjee says, and given syphilis, it confirms his opinion about the node, particularly if you see another node on the sternum—the thickening found there which Col. Chatterjee is definitely of opinion is a node. On the other side is the statement that it is *probably* in the fascial

layer,—that is to say, on the fat. In a word, what will decide the point, is syphilis in the plaintiff.

Neither Dr. Thomas nor Dr. Denham-White was asked point blank if they thought the plaintiff had syphilis still. I agree that it is difficult to say as to anybody that it does not exist, and so far as negating the identity by negating syphilis, that is out of the question. But the positive would be an identifying mark, not a conclusive mark, but a mark, as the 2nd Kumar had syphilis, and it is not a universal trait.

Now the doctors were there “to confute or confirm syphilis,” to quote Major Thomas’s own words, and they did, and saw, certain things which are not in the notes of Lt.-Col. Denham-White. Major Thomas admits that the following things were done as Col. Chatterjee says: Col. Denham-White pressed the plaintiff’s testes. Col. Chatterjee drew the attention of Major Thomas and Col. Denham-White to the way he breathes, and there was a close examination of the penis for a chancre scar. I see no reason to disbelieve Col Chatterjee, that the plaintiff’s breathing was snaffly—that is, heavy and noisy, that Major Thomas looked into the nose for rhinities or inflammation of the mucus membrane there, that he tried to focus a torch there. Major Thomas admits the peculiar breathing, but points to the œdema on his legs, and to the heart—the heart was not examined but the breathing was not merely heavy, but noisy which points to obstruction in the nasal passage. Col. Chatterjee also saw in the nose leukoplakia or white spots, and saw also that the septum slightly thickened. I know, says he, that these conditions occur in syphilis.

Add to this the following facts:

Plaintiff’s testes were squeezed thrice before he winced and Col. Chatterjee thought that the pressure that made the plaintiff wince would make a normal man scream.

There is a clear-cut fissure on the plaintiff's tongue, and between his toes there are rhagades. Col. Chatterjee saw them. I saw at court the fissure on the tongue, and between the toes sloughy—looking white sores, and Col. Chatterjee's name for them is rhagades. His evidence is that the things he saw in the nose, and the fissure on the tongue, and these rhagades, and the bony growth confirm syphilis to mention the definite data, and not all that a specialist's eye could see. And there was also the loss of testicular sensation.

On page 85, David Lees says: "The tongue is one of the commonest site for gummatous formation, because of the constant irritation from food to which it is exposed, and because of the slight recurrent trauma from the sharp edges of the teeth. The area of the mucus membrane involved become denuded of epithelium, and shews a smooth surface. The infiltration which occurs tends to cause *fissuring of the tongue*, but ulceration is rare, unless the deeper muscle tissues of the tongue are involved."

I find that the plaintiff is an old syphilitic individual, and that on the right side of the bridge of his nose has occurred a bony growth, 7|16th of an inch in diameter, that on the left side of his bridge occurred a slight thickening of the bone as Col. Chatterjee found, that there is a slight thickening of the septum, and inflammation of the mucus membrane of the nose, and that these, and even the admitted bony growth alone, coupled with the fat from which the nose could not be altogether immune, and with the fact that there has occurred as slight saddling explain the difference from the Kumar's nose judged by the photo alone. These. and the node alone are bound to change the appearance of the nose, so that it no more displaces his identity than the fact that he has come to have some grey hair.

(d) (2) *The skin gumma marks.*

These are under the head VI in Major Denham-White's notes. There are six of them, and these are:

(i) Small, depressed, irregularly circular, scar on the ulner border of the left forearm in its centre. 3 M.M. diameter.

(ii) Irregular oval mark 7 M.M. in its maximum diameter 4.5 m.m. in transverse diameter, posterior aspect of the radical side (right forearm).

(iii) Small, depression, right forearm, 1 inch above ulner styloid (not a scar) Continuity of the linear marking of the skin throughout across its surface. No break in the continuity of the skin.

(iv) Very faint linear scar, 8 m.m. in length, 5 inches above the tip of internal malleolus. (right side).

(v) Scar:

Tobacco-piped shaped, slightly depressed, lying transversely across the lower part of the leg—2½ inches above inner malcolus (left). Stem 1⅛ inch, diameter of *the* bowl ½ inch. Surface shiny, margin pigmented with one of two flecks of pigmentation in the centre.....
Like this: (left leg).

(vi) Irregular pigmented mark 2 inch long, deficient in pigment, in places—maximum width 6|16th inch, running transversely backward from the centre of the inner malleolus (left leg).

The plaintiff did not point out this last as a gumma mark. The doctors saw it for themselves, with an eye to syphilis. Col. Chatterjee thinks this a condition of the skin called leoko-melano derma, a thing of which Lt.-Col. Denham-White has heard but with which he is not familiar. It is of no importance—this mark except as evidence of syphilis which has been otherwise established. Lt.-Col. Denham-White ventured the opinion that it might be a

port-wine mark, but admitted that it did not satisfy the test of a port-wine mark.

Col. Denham-White and Major Thomas are of opinion that the rest are not gumma-marks at all, while, Col. Chatterjee thinks that they are so. He is very positive about it.

Of the marks (i) is on the left fore-arm and (ii) and (iii) are on the right forearm. The (i) and (ii) are scars as Col. Chatterjee says, and as Col. Denham-White dictated according to Col. Chatterjee's notes, though the dictation as taken down by Major Thomas has omitted to take down the word scar, and puts down "mark". It is obviously scar, seeing that Col. Denham-White puts the (i) and (ii) into the same class, and calls them small-pox marks which always are scars. Now, these three marks (i) to (iii) are all circular, or roughly circular, and the first and the third are depressed. In the (i) and (ii) Col. Chatterjee saw small spots of pigment, and the (ii) is slightly depressed too. The (iii) is clearly depressed, as noted but not a scar. Major Thomas admits that theory of these marks are only conjecture, and Col. Denham-White's no less so, seeing that he began by saying that these are pot-marks, and then limited that opinion to (i) and (ii), and has no opinion as to the rest. Major Thomas's opinion negating syphilis is based upon his notions of a healed gumma scar drawn from English books, and English or white skin. It is agreed that these scars are circular, and would be generally depressed, and will have some pigment. This pigment will be in the margin, and may occur in the centre also, or may lose their marginal pigmentation if it had recurred in situ as it is apt to do, and the subject of this pigment in coloured people is a special subject of which Col. Chatterjee has made a *special* study. I agree therefore with his view, particularly in view of the syphilis in plaintiff otherwise proved, that

that the marks (i) and (iii) and (v) are gumma-marks, though the (iii) is the mark of a subcutaneous gumma. I find therefore that these marks are gumma-marks. As to the mark (iv) and (vi) they are dubious, and I must hold that they have not been proved to have been gumma-marks.

The evidence in this case is not so exact—it could not be that the precise sites of the ulcers on the 2nd Kumar can be ascertained. The evidence is that he had these ulcers about his elbows and about his leg. The defendants made no attempt to fix these sites, and Dr. Ashutosh in answer to my question gives a vague account about elbows and knee-joints and may be other places, he does not remember. It is, therefore, not possible to say that these are identifying mark like the irregular scar on the top of the left outer ankle, but nothing in them disproves the identity. On the other hand, the fact of syphilis in the plaintiff must be added to the identifying circumstances and also the fact that about his elbows, below them, as one witness vaguely stated about the Kumar, (P. W. 15) and on one of his legs, occur gumma marks.

I should note two things which I ought to have mentioned before. There is no mark of a chancre anywhere in the plaintiff's penis. Col. Denham-White says that a typical chancre, if it takes place on the glans penis leave a mark for ever. Major Thomas agrees with this, but says that that a chancre may be fleeting, and may leave no mark. Looking to the evidence given by the plaintiff, and the old Khansama, it does not seem that it was a fleeting thing. It had to be washed and dressed. It is not clear however that it had occurred on the glans penis, and not on any other part of the penis, such as the under-surface of the prepuce, or the balanopreputial fold, a common site (See page 8 and 9 of the David Lees). The account given by the witnesses—it was given long before this particular ques-

tion arose—would seem to indicate the foreskin. In fact, according to authorities, a chancre anywhere may not leave a scar, and its presence, or absence, is of little help in examining a person with a doubtful history of syphilis (See Thomas and Miles "Manual of Surgery", 8th Ed., Vol. II, page 152: Romani's and Mitchener's 'General Surgery,' Vol. I, 2nd Ed., 1929).

The other thing is the evidence of Lt.-Col. Mac Gilchrist for the plaintiff: He says boldly that he noticed some pigmented scars on the plaintiff's body and that such scars result from syphilitic ulceration, but in cross-examination he says they were not gumma marks. He had come to depose on a different topic, and it does not appear what marks he was refering to, nor did he go into the question with the care and fullness of the three doctors I mentioned. I have been dealing till now with the marks that do not rest upon the credibility of witnesses alone. The scaly feet is virtually common ground. The insurance doctor's mark—the irregular scar over the left outer ankle rests upon a rock. The marks of the piercing of the ears were the defendants' own suggestion. The gumma-marks rest upon admitted ulcers and syphilis. I turn now to the marks which rests upon the credibility of the witnesses alone.

(e) *Bubo-Mark.*

" 'Transverse linear scar,' $\frac{5}{8}$ th inch above and 1 inch lateral to the left anterior, superior, spine $2\frac{1}{4}$ inch in length". This is the description of Col. Denham-White. Its exact position has been indicated on the picture A(40).

The mark is an operation-mark, but it was not on a bubo at all, seeing that it is on the abdomen, and not on the groin, though close to it.

The plaintiff has always been describing it as a—*bagi* which denotes a bubo, syphilis or otherwise ; but he has

been calling it the effect of his syphilis. On this point the account that he gave was this; his syphilis began with a primary sore on his penis, and about a month after he had this bagi, and one Elahi doctor operated upon it. He would fix the time about 4 or 5 years after his father's death i.e., about 1906. This account is corroborated by 2 old servants, and the family compounder, and one of them helped in washing it (P. W. 48, 52, 74). Elahi doctor was a well-known doctor in those parts as it came to be admitted after a great deal of attempt made to shew that he was unknown, and after an inquiry as to whether he was a quack. His diploma is on record, and it is a curious fact that Rai Saheb was inquiring about him, after the plaintiff had made his appearance, in 1921 as he admits; and he made a subsequent attempt to get at him (See Ex. 304). The evidence is supported by the mark, and if he, or the plaintiff took it for a bubo, since it followed the primary sore, and if the plaintiff has always thought so, one should not wonder, seeing that Major Thomas admits that people have a confused notion of the region so near the groin. I find that this operation-mark was on the 2nd Kumar. Elahi doctor was a surgeon, and the Kumar would keep the thing a secret, and not necessarily call the family doctor for this purpose.

(f) *Broken tooth.*

One tooth of the plaintiff is broken—the left, upper, first molar except for an outer shell.

Jyotirmoyee Debi says that the 2nd Kumar lost this tooth as the result of a fall from a tom-tom. She can not fix the date. All that she can really say is that it was after the death of the father, though she tried to place it somewhere near the marriage of the 3rd Kumar. I do not think anybody can fix the year of another person's loss of a tooth, and this inability to fix a time, as regards a valuable identi-

fying mark, is not a circumstance against the plaintiff or his witnesses. Anybody putting forward an impostor with a broken tooth will have a clear case about it; but the lady has at all events, does not know the time. In his evidence-in-chief the plaintiff narrates the accident—how he was going towards the station, and his horse strided on seeing his brother's elephant coming from the opposite direction, and he fell and broke his tooth. He does not mention the time—the date—and he was not cross-examined on the point. I do not consider the omission odd, but there was the general question that his marks were being imputed to the 2nd Kumar, so that I am not dealing with the point on the footing that it has not been questioned, but I see no sufficient reason to reject the evidence of the old servants examined by the plaintiff who supported this loss of a tooth (P. W. 48, Protap Narain; P. W. 49, Probhat De; P. W. 58, Ganga Babu; the old Nazir, 52, 71 Nagen, P. W. 806). None of them saw the accident, except that the nazir went to the spot immediately after it. Elokeshi who was his mistress at the time at Dacca—the woman I mentioned above who from a fiction became a reality—had seen it about the Choto Kumar's marriage, but could not fix the time. On the other side, the Rani denies it, and nobody else has heard of it. Most of them are not likely to know, but Phani Babu, I expect, would hear about it, but I am not prepared to accept his negative. I find that the 2nd Kumar had a broken tooth, like the plaintiff; but the surest basis of this conclusion will be the identity otherwise proved, and not by this particular mark.

(g) *Abscess-mark on the head.*

(h) *Boil mark on the back.*

(i) *Tiger-claw mark on the right arm.*

(ii) *Mole on penis.*

(g) These three marks practically rest upon the testi-

mony of Jyotirmoyee Debi alone, besides that of the plaintiff. She says that the abscess mark on the head was left by the biggest of several boils in his childhood, and she noticed it even after the Kumar had grown up, when he shaved his head at the age of nine, when his chura was held, and also when he shaved his head on the occasion of his father's death, and again on the occasion of the death of the mother. I see nothing improbable in this account, marks on the head are apt to attract attention when it is shaved—but the mark, since it rests upon her testimony, can not check it, and must be found to be a fact if the identity otherwise appears.

(h) This boil-mark on the back stands on the same footing. It is item No. 8 of Dr. Denham-White's notes. Jyotirmoyee Debi says this boil occurred when the plaintiff was 5 or 6. The plaintiff had said, when he was 8 or 9. Nobody else had seen it except Sures (P. W. 5). He, a step-son of Kripamoyee, has been living at the Rajbari from the time he was three years of age.

The mark will stand as a mark of the 2nd Kumar also, if the identity otherwise appears.

(i) The mark No. 7 of Denham-White a superficial irregular mark consisting of irregular areas of pigmentation, 2 inches below the inner epicondyle of humerus.

The plaintiff says that this mark was caused by a tiger-cub some six months old. In cross-examination, he says, he only struck a khabla (Paw), and it looked as though some claws were out. The plaintiff was asked nothing further on the point, but Jyotirmoyee Debi was asked a lot of questions to get at the exact nature of the mark, as though if she was giving false evidence, she had not seen the mark on the plaintiff. The cub is said to have hit him sometime after the Rajah's death when the Chiriahana of the 2nd Kumar was there, and the attempt to

get an opinion from the doctors as to whether a claw could cause a mark, supposing it were a cub, and supposing it was playful, was absolutely futile. It is difficult for me to understand why, if the mark was being falsely imputed, a medically impossible cause should be given. I find that the evidence touching this mark is true, unless it is displaced by the failure of identity on the grounds.

(ii) The same remark applies to the mole on penis whose presence in the Kumar has been deposed to by 2 old servants and an old mistress (P. W. 48, 52, 987).

(j) *Vaccination-marks.*

These, being fairly universal, are not identifying marks, but now that the plaintiff called for the medical report, and the mark there fits him, a faint attempt was made to shew that the vaccination-mark mentioned in that report, are not on the plaintiff. On the medical report there were two vaccination-marks on each arm, and these were put down, not as an identification-mark, but against the column containing the inquiry as to whether the applicant had been vaccinated. Now on the plaintiff's body occur two vaccination-marks on one arm, and only one on another, and these are very faint. The doctors examined for the plaintiff say that the marks are not at an unusual place—the inner border of the biceps, and Major Thomas says that the unusual place struck him when Col. Denham-White drew his attention to it, but neither could go so far as to say that they are not vaccination-marks which they obviously are. One of them may have faded in the course of 31 years.

Before I close this topic I should say a word about certain features, and even marks which it was suggested were marks that ran in the family. I would not speculate on heredity, or found any inference on the mendelian theory which for some reasons Mr. Chowdhury put to a

photographer who of course knew nothing about it. Common experience however shew what theory explains that certain traits, such as hair-colour, hair-shape, the shape of the lip, the shape of the nose and of the ear are often inherited, and often skip a generation. The utmost that I can say without speculation is that these three children of the Rajah—the 2nd Kumar and the 3rd Kumar and Jyotirmoyee Debi were wholly different from the first and the 2nd child, Indumoyee Debi and Bara Kumar who were dark and hairless; that I see their complexion and their hair-colour in Rajah Kalinarain and looking to him the two fingers of almost equal size on the left hand could not be a freak on the photo; but the thing of which there can be no doubt, and which I find, is that the scaly feet are a family mark; and the ear, with its peculiar shape and free lobe, was in the Rajah Renjendra Narain Roy.

Gait, expression of the face, Voice.

Gait is more or less useless as an identifying mark, but the defence made, through Atul Babu, (commission) the gait, a point of distinction. So far as the defendants are concerned the point vanished, but the evidence on the other side, given long before this point came into view has the ring of truth. Mokhoda Debi (examined on commission in 1930) was describing her first sight of the sadhu in Chaitra 1327—his first visit to Jaidebpur as Sanyasi,—when some suspicion had arisen that he was looking like the Kumar. The old lady had known the kumars from their birth. When she got her first sight of the sanyasi, he was going towards Madhabbari, she could see his back, "his gait, as I saw it, sent a thrill through me—it was the Mejokumar's", she says. Jyotirmoyee Debi when she first saw the Sadhu was struck by his gait, among other things. Of the other witnesses I must mention

Hiranmay Babu P. W. 921, a senior pleader of Dacca, and a gentleman of the highest position at Dacca. When the Sadhu was at Buckland Bund, in Falgoun or Chaitra 1327 he was taken one day to a Circus by the late Sarat Chandra Chakravorty, pleader of standing who put him in the front row. "I was amazed to find such a man in such an attire, as there were I a dies. His manner struck me as peculiar as if he were a man in disguise. After he left, and as the combined effect of his manner of sitting, his gait, and other things the thought occurred to me that he might be the 2nd Kumar."

I find that there is nothing in the gait of the plaintiff that distinguishes him from the 2nd Kumar. On the other hand his gait is the 2nd Kumar's gait seeing that it reminds people of him even when he had not disclosed his identity; and as the gait had some *individuality*, looking to this fact and the evidence of Atul Babu, it is a slight addition to the pile of identifying circumstances.

Expression.

At one stage Mr. Chowdhury was using one of the distorted photos I mentioned—distorted on the face of it, and the experts explained why—called it a good resemblance in a petition, though the man was there to see, and suggested that as the plaintiff had sent it to the Board of Revenue with his memorial, there was admission of some kind as to his looking like this photo. He referred to this photo, and called the expression of the face sulky though there were other photos of the plaintiff, specially those taken in a studio and after he had shaved his beard, which shewed the contrary. There is nothing in this point.

Voice.

Despite a certain impediment of speech to which I shall come, the evidence of numerous competent witnesses

is that the plaintiff's voice is the same as the 2nd Kumar's. Nobody denies it except Phani Babu on the other side, and one Manuck, a very questionable witness, examined on commission. Witnesses on the side of the defendants have heard the plaintiff speak, and he deposed in open court in 1929 in a sec. 144 proceeding and at Dacca, and old officers of the estate, such as Probal Roy deposed in that case, but none come to say that the plaintiff's voice is different. I find there is nothing in the voice that goes against identity.

Add to this:

The shoes fit-size six.

The old clothes of the Kumar fit—not altered to fit. I fully discussed this point before.

To sum up:

The sister, the 1st Rani, Sarojini, the 2nd Rani's own aunt, and her own cousin say that the plaintiff is the 2nd Kumar, all other relations say so, except Phani Babu and his sister and her son-in-law, an employee of the estate.

The sister's belief is honest or the situation that arose on the 4th May 1921 could not arise, and Rai Saheb could not think her honest—he had had seen the Sanyasi and he knew the Kumar. Ex. 59 which he calls *his* report over Mr. Needham's signature, coupled with his evidence, makes it manifest.

Respectable and independent men, elderly people having no sort of interest, and men of position and property, whom one would not suspect of romance of any kind, or none that will not draw a line at perjury, swear the plaintiff is the 2nd Kumar. Their testimony confirms, and is itself confirmed by the honesty of the sister.

On the side of the defendants there is not a single independent witness who knew the Kumar and remembers him. Such of them as did know him, and must remember

him came with a determined effort to prove total dissimilarity, but the real belief of some of them broke out. "At *first* sight he seems to be the same man". That is as far as an opponent's witness can go (D. W. 326). How could the nose get so broad? was all that Sukumari Debi could say: which curiously enough a tenant witness had said on a former occasion (D. W. 115). The nose seemed a little thick was all the difference that another tenant witness could say (D. W. 324). A witness tutored to say that the plaintiff was taller says he is taller, but how could be very much taller? (P. W. 381).

The photographs prove no difference in features, except a difference in the nose, judged by photos alone. The difference has been explained by one admitted, and other proved changes. That at first sight a stranger would not call the plaintiff and the Kumar the same man on the photos is of no consequence. In the admitted photos of the Kumar he does not look the same man to a stranger; and the frock-coat photo of the Kumar resembles the plaintiff more than the highly retouched inset.

Add to these the following marks and features which are exceptional and would be identifying marks:

<i>Kumar.</i>	<i>Plaintiff.</i>
Complexion—Pink and white.	Pink and white.
Hair—Brownish.	Brownish.
Hair-form—Wavy.	Wavy.
Moustache—Lighter than hair.	Lighter than hair.
Eyes—Brownish.	Brownish.
Lips—Twist on the right lower lip.	Twist on the right lower lip.
Ears—Angle at the rim.	Angle at the rim.
Hands—Small.	Small.

<i>Kumar.</i>	<i>Plaintiff.</i>
Feet—Size six.	Size six.
Adam's Apple—Promient.	Prominent.
Index and middle finger of the left hand—Less unequal than those of the right.	Less unequal than those on the right.
Point of flesh or something in the lower eye-lid (right).	Present.
Scaly feet—Present.	Present.
Irregular scar on the top of the left outer ankle—Present.	Present.
Ears pierced—Present.	Present.
Broken tooth—Present.	Present.
Syphilis—Present.	Present.
Syphilitic ulcers—Present.	Marks of such ulcers.

Add: Shoes fit. Clothes fit. General figure same, except for fat of which one sees a trace in the photo a (15) (Look at the neck). He looks the same age. His height might well be to-day what it is, looking to his height at the age of nearly 21. Add the marks found: the boil-mark on the head; the boil-mark on the back; the operation-mark near the groin; the tiger-claw mark; the til or *mole* on the penis; the voice and the gait. Add these as a reassurance. Add the fact that the Kumar was on the whole, a very exceptional looking man and the coming of the plaintiff to Dacca is itself an accident on the defendant's theory. Leaving aside the things said in this paragraph, the rest—those on the table above—are a collection of accidents that can never occur in a second individual. If the chance of each of the item occurring in a second individual is represented by a fraction, the chance of all these *occurring* in another is the product of these fractions, and any one with a sense of mathematical odds would see that it is nil.

The plaintiff therefore must be the 2nd Kumar himself unless it appears that he had died in Darjeeling, or that his mind is different, or that his handwriting is different, or that he is not Bengalee. These topics remain to be discussed.

It is no wonder that when on the 6th May 1921 Satya Babu got the news that this Sanyasi had declared himself as the 2nd Kumar of Bhowal, the first thing that he did was to go to Mr. Lethbridge and ask him "to safeguard the evidence of death".

The mind of the plaintiff.

The plaintiff stepped into the box in crowded Court. A more interesting witness never did so in my experience. The Kumar had long been known to be dead. His Rani was in possession, and disowned the man. He had been declared an impostor. His story seemed crazy, and his claim, preposterous. As he spoke, with a faint, but unmistakable Hindi intonation, and there was about him a Hindusthani air. The man, according to the defence, had come to sustain a fraud planned for years. I confess my attitude was one of incredulity, and I heard every word he uttered, and every point in his demeanour, with an attention that never flagged.

In examination-in-chief he told his story. He gave a brief account of his life, his family, his visit to Calcutta for treatment of syphilis, his trip to Darjeeling, what had taken place there, how he lost his consciousness, how on regaining it he found himself among four sanyasis, and passed with them from place to place until he parted from them at Braho-Chhatra in Nepal, and came, after passing through various places to Dacca. Then he gave an account of his known proceedings, the visit to Kasimpur,

the visits to Jaidebpur, the declaration of identity, and some of the things that followed down to the suit.

He was cross-examined by Mr. A. N. Chowdhury, and was in the box for nine days. As Mr. Chowdhury began to unfold his Kumar, and put to the plaintiff his knowledge, and his traits, the things he knew, and the words he knew, by way of general knowledge, it seemed amazing that any sane man could have supposed that he could play the role for a moment. The kumar, as conjured up in cross-examination, was what had been put to Mr. Ghosal in Calcutta before the trial—"a well-educated well-polished aristocrat". This man, the plaintiff, was absolutely illiterate, except that he could write the signature Ramendra Narain Roy, in the forms I shall mention in English and Bengali, but without knowing at the present moment, at all events the letters of which the English signature is composed, with the exception of a single letter, N. The Kumar knew English. This man does not know a word of English except such words as any illiterate man might pick up in this country. The kumar knew every variety of sports, billiards, cricket, tennis, foot-ball, polo. This man knows nothing about them. The Kumar wore English-clothes, knew their names, dined with Europeans in every dress, knew the names of English crockery and cutlery, and the details of a well-laid table. This man knew nothing about them. The Kumar was musical. This man could not give a song. The Kumar knew how to take a photo, knew the word lens and focus, for instance. This man knows that word camera, but does not know how to take a photo. The Kumar would mix with Europeans, but this man says he never met a Saheb, except the Collector, and the Commissioner, and the Governor, and that, only in the company of his elder brother who alone knew English. He said he was not a

durbari man, and knew only shikar and horses, but he did not know the English terms connected with guns and ammunition, nor the English names of the colours of horses. The cross-examination was mostly limited to the knowledge of English terms, and it will have to be seen how far it reveals real ignorance of the things which the Kumar knew, as opposed to their English names. But as I pictured the Kumar which Mr. Chowdhury was presenting, I thought that if there was an impostor, the plaintiff was one, but the odd thing about him was that he did not look an astute adventurer, cool, collected, and able to play a part. He was raging and fuming under the jeers and taunts his answers provoked, when for instance he said he did not know the term cue, or the term menu, or the term braces, but he was not noisy or shifty or afraid, and did not look or behave as though he was posturing, and trying to brozen it out. In intelligence he seemed decidedly below the average, and that apparently led to the contention that he was a puppet.

The remarkable thing about the cross-examination was that it did not touch, except incidentally, and generally, apropos of nothing, the Kumar's memory, except for four things, viz. his syphilis, the tutors who taught him, and their success, a few questions about what had occurred at Darjeeling, and a question about the disposition of the rooms in the Baradalan, the Manager's house, in the Rajbari, after producing a confusion, as it turned out, between it and another building called the Guest House. Now Mr. Chowdhury took the trouble of eliciting from the witnesses who had gone before the plaintiff that the Kumar, according to them, was illiterate except that he could sign his name, and he could see as well as any body that the case was going to be made was that the Kumar was illiterate. If the Kumar was a well-educated man

that meant an end of the plaintiff, and the learned Counsel after the plaintiff said in examination-in-chief that he was illiterate, except that he could sign his name, was perfectly entitled not to go to memory at all, but to put a few or such questions as he chose to shew that the plaintiff was illiterate indeed, and impossible, indeed, and had the effrontery, shared by mad advisers, to try to personate an educated man with English ways. It turns out however that the Kumar was as illiterate as the plaintiff when he left for Darjeeling, and the whole of the cross-examination was over his head, i.e. to say so far as it went to his general knowledge, and so far as it went to sports which the 2nd Kumar did not know. That given to the deliberate avoidance of the memory though a thousand memories might have been set against his—a glaring significance. The learned counsel said that the man had ample time to be primed, and he was not going to fall into the trap.

The cross-examination was of this kind.

Do you know 'athletics'? Sports? Cricket flannel? Bell-brick cricket flannel Stumps? Wickets? L. B. W.? Umpire?

Deuce? Vantage? 15-30-40.

Cue? Miss—in baulk?

Goal-keeper? Half-back? Full-back? Centre-forward?

Polo-banians? Foul in polo? Cross? Nearside—back-hand? Off side backhand? Chukker?

As to clothes, he was asked if knew 'military colours', collars; suit; braces; Handkerchief; galice; vest, socks tie, lounge suit, evening dress, chesterfield coat, broad cloth, double-breasted coat, single-breasted coat. The plaintiff did not know these terms, though he was using the term 'suit' in the sense of a suit of clothes and when in the middle of these terms for articles for dress, the learned

Counsel put the word "crushed food" the plaintiff said it was a thing given to a horse. When instead of the terms some of the things were shewn to him he knew them and had his own words for them. His word for collar, when the thing were shewn to him was 'colla' with accent on the first syllable, and his word for a tie is *nekti* (short i) and for 'vest' 'was coat.'

Similarly he was asked if he knew: "dining room," sideboard, cupboard, spoon, fork, knife, salt-cellar, cruet, menu, tumbler, wine-glass, table-spoon, napkin, fish-knife, the terms were put, not the things.

Did he know a camera? Yes. Focus? Lens? Exposure? No. His word for a studio was "studi".

Was there a rose garden in the Rajbari? Yes. Know an orchid? No.

A rose, a season flower? No.

As to carriage, did he know a charabanc? No. American cart?

"It is the name of a motor, says the plaintiff. Heard of it. Never saw it".

American cart is a species of tom-tom?

"May be. Yes, it is a tom-tom on four wheels Its name I do not remember."

Mr. Chowdhury instantly turned to another matter. It was looking like a trap. It was perilous to go beyond words on the subject of horses and shikar.

On these two subjects it will be necessary to see how far Mr. Chowdhury went beyond words. There are certain things you can not know without knowing the words, such as tennis or billiards or cricket, or football, though even in the last two there are local words, mostly corruptions of English words for the English terms. But out in the Moffusil a man can shoot without knowing the reason of the difference between the muzzle-end and the

breech-end, and there is, as the evidence will shew, a local terminology for guns and ammunition. For instance, 'Machhi' is the word for the foresight, and 'Kunda' for a barrel 'Kartuj' for a cartridge. An illiterate man may be a good shikari without knowing the terms put to the plaintiff, and may be a good horseman without knowing the terms put to the plaintiff. For instance, the plaintiff was asked in connection with shikar the meanings of; Target; magpie; cat's eye; bull's eye; inner; outer; cordite; choke bore; "wild bore," D. B. B. L.; double barrelled breech-loader muzle-loader; smooth bore; foresight; ball-cartridge; point blank range; shot B; B. B.; S. S. G; big game; dum-dum bullet; lethal bullet; soft-nosed bullets; smokeless bullets; gun-powder; hammerless gun; and Martini Henri and bore 303. The plaintiff did not know these *terms*. He was asked; If you were the 2nd Kumar you knew the English words as Shikari. I shall return to this topic to find out how far the inquiry went beyond words in this matter.

As to the horses he was asked similarly a lot of English words. "Hands", snaffle, curbe, leading rein, chestnut, bay, grey, roan, dunn, piebald, skewbald, dapple grey.

He put some Bengali words too, and it turned out that one of them, *namda*, is not in use in Bhowal. The other three are kajai, dahana, and "doldewa." The last one means rubbing down, and the plaintiff could say that.

Similarly he put some words in use in racing; steeple chase, handicap, and so forth.

Lastly, Mr. Chowdhury put to him such words as:

H. E.; H. H.; I. C. S. "How do you do?" 'Quite well' 'Thank you.'

The plaintiff did not know their meaning, except that as to I. C. S. he said collectors and commissioners and the

sort of people had to pass it, and as to 'Thank you,' he said it was *asirbad*, or blessing.

It is not necessary to go into these English terms in detail, and try to find out which word the Kumar knew and which he did not, seeing that if the kumar was educated and knew English, it would be an end of the plaintiff. On the other hand if he did not know English or if he was illiterate, it would mean an end of the cross-examination, unless it is shewn that he was likely to pick up those words from his usual pursuits. It would be in that event like setting to the plaintiff a Latin paper and then *failing* to prove that the kumar knew Latin.

Now it would appear from the evidence on the side of the defendants, and from things which they have admitted that the Kumar was absolutely illiterate, except that he could sign his name in English, and Bengali; and as to the terms put and the possibility of the kumar picking up those from his pursuits or from his style of living, the question becomes easier because of a discovery placed before the Court. Now having put their kumar before the Court it was necessary to shew that he knew English, that he wore English clothes, and knew their names, and dined in the English way, and knew all variety of sports from tennis to polo; above all it was necessary to shew—that apparently was thought that he knew the terms. Now it came to be admitted that the kumar knew nothing of cricket, or football never played either except that as a child he kicked a ball, and a child he would hit a ball with a bat which children everywhere do, without knowing L. B. W. The evidence was therefore limited to tennis, polo, and billiards; and to his knowledge of the English terms touching guns and ammunition; and to his general knowledge of English.

Now Phani Babu was put into the box as a sort of 2nd Kumar's intellectual double, as a measure of what he

would be like if he were living to-day. His own education, he says, came to an end when he was in the 3rd class of a High School, and when in 1902 he came from Dacca, having done with school, he found the 2nd Kumar as good as he in English—could carry on conversation in English, and Chhoto Kumar too could do so, though a little less. He added that the kumar's education stopped in 1900, the year of the Rara Kumar's marriage, and then the Rajah died, and thereafter there was no education at all, except for what Mr. Wharton could do in less than a year. Leaving aside this account of the education—it was toned down even in this account to that of the English of a third class boy—the rest of his evidence on this subject goes to the terms put to the plaintiff. It was apparently supposed which it would not be enough or possible to shew knowledge which would drag in the terms, but somebody must come, and swear, that the kumar knew such and such terms. Phani Babu therefore after saying that the 2nd Kumar played the sports, cricket and all, and he was his companion in these sports went on giving the cricket, the tennis, the shikar terms, and nearly all other terms put to the plaintiff from bull's eye to cup-board. Now it transpired that a sort of word-book was prepared for him so that he might cram it, and rattle off the terms, and some surplus against cross-examination. This book is Ex. 468. It is a printed diary for 1932 utilised for the purpose. He admits that the entries are in his hand writing, except the entries under the 7th to 13th March, and those under 21st, 23rd, 24th, 25th, December and the exceptions, it was admitted are in the hand writing of a pleader on the side of the defendants. In this amazing book various terms and names of things and matters have been entered, and under these heads:

Billiards—a sketch of the table, with terms and player's names.

Polo—a sketch of the field and the terms and the names of players.

Cricket—a sketch of the field; terms and players.

Tennis—a sketch of the court, terms and the players.

Football—Measurement of the field, and the terms.

And as the kumar is going to be a well-educated, refined aristocrat, having a good wardrobe of English clothes there occur lists of scents: otto-de-rose, white rose, and so forth; soaps, from Pears to carbolic; a list of names of English clothes: chesterfield; sweater; evening suit; frog coat (as spelt), 'loun suit' (apparently lounge suit) 'durbar suit,' nicarpacar riding suit, Jodhpur bridge, (apparently breeches) bridges (apparently breches) half-pant, ganji-payjama (apparently the local word for drawers), soft 'color,' hard 'color,' single 'color,' color closed, felt hat, sola hat, long hat, straw hat. Of shoes, several varieties occur, with curious spellings. There is a list of English dishes, such as soup, "roast ham," "stoo," "kutlet," "jog," "stoo," "brown," "Iriss" (apparently Irish) (pegion grill) "choap," "foul," and other "currys," and so forth. As there is to be a dining room, the word 'menu' is there, though spelt 'meanu' and the poor old khansama whose names, after hearing the case, are familiar to me, have been put down as 'table-boys,' and besides the English food, occur the word 'dinner-wagon,' and the word 'cupboard' and 'side board,' and a fairly long list of dinners. There occurs a list of what are called 'card-games' and the abbreviations C. S. I., C. I. E., H. E., H. H., K. C. S. I. As the kumar must be musical, there occurs a list of "2nd Kumar's song"; as he must know photography, there occurs a lot of information on varieties of camera, and on the chemicals, and on all the technique of the thing. The most interesting list is that under "Horses." You may find there all that you need know about horses, the English names for their colours,

and what is more important, a lot of local words for the English names put to the plaintiff or even for the Bengali names, chosen on cross-examining the plaintiff. For instance, who could have known that the local word for *namda* (saddle cloth) is *malkhochā*. Against that Phani Babu puts down "Namda" as an English equivalent, and came to swear that this word which the plaintiff did not know was known to 99 p. c. of the horsemen in East Bengal, the word *titar* for a partridge, and the contention was that, that was Hindi, as in West Bengal the word is *titir*. Jyotirmoyee Debi used the word *titar*, but she did not count. Phani Babu came and swore that the local word is *titir*, and that the word *titir* is Hindi. Some peasant witnesses from Bhowal, however, used form *titar*, just as the plaintiff did, and the point ceased (D. W. 422 for instance).

I need hardly notice the explanation given of the book that it was written in answer to a set of question put by a pleader for the defendants, after the examination of the plaintiff. The pleader there put in things of his own. But quite apart from the book, Phani Babu has lived for 26 years after 1909, has been going to meetings, was a member of the freemasons' lodge, and has seen dinners. He might have picked up the word *menu*, and as he drinks or used to drink, he might know the word *wine-glass*. He is himself a *zemindar*, certainly did *shikar*, and used to what would be called high living in a village, and though half-educated, he is not illiterate and on his own account which I believe is false, he had read up to the M.A. standard at home, and was at school up to the Entrance class which may be true though he tries to keep it down so that he might be good measure of the 2nd Kumar and play the part. Even he had to be coached up a lot to come to the level of Mr. Chowdhury's kumar as conjured up in the cross-examination of the plaintiff. That kumar is not a reality, but a

fiction, and the Court will have to consider why truth will not distinguish the plaintiff, but falsehood. Untutored, Phani Babu's word for a "frock coat" is for instance "frog coat." The plaintiff's word "folat coat." Untutored, Phani Babu, in the matter of these terms, would be very much like the plaintiff, even if you do not take off his education and later acquisitions.

It is these terms put to the plaintiff as practically the sole mental test that led to the large mass of evidence to get at the style, and the likelihood of these terms being picked up in the course of his life directly it began to appear that literacy was going to vanish. Learned counsel frequently asked me to remember that the 2nd Kumar was a "Rajah's son," and education or no education, there were certain probabilities. I shall bear them in mind, but knowledge of English is not a gift of fortune, you can not know the L. B. W. or remember it unless you play or take interest in the game, and as to the style, it was unmitigated Bengali, despite some ceremonial clothes put on to see high English officials, and their occasional visit. "Rajah's son" served some purpose with the witnesses. Was he not looking a Rajah's son? Had he not the bearing of a Rajah's son? Was not his moustache like a Rajah's son? One peasant with due deference spoke of the nose as that like the nose of a Rajah's son. The court will not be misled by a phrase.

I consider that the cross-examination, so far it goes to explore the mind of the kumar was exactly what one minded to defeat the true kumar, would design. It avoids memory, and goes to general knowledge which as far as the sports go did not exist, as he never played them, and which as far as the shikar and the horses and the clothes go, did exist, but was prevented from appearing by the English terms, and by the Bengali terms not in vogue in

East Bengal deliberately chosen. And this sticking to general knowledge, and avoiding memory on the ground that he has been tutored is a pretence. That a witness has been tutored is not a ground for not cross-examination him but a ground for cross-examining him the more. In the circumstances of this case the court will be astute, and there was little chance of any knowledge being taken as other than fectitious, unless something appeared, and there was no mistaking that it was memory. The plaintiff was at Jaidebpur for 37 days, more than 12 years before his deposition began. His family was small, but establishment vast, and countless officers came and went, countless trades-people. The plaintiff was never inside the Rajbari at Jaidebpur, not the residence at Dacca. On his behalf there was a demand for inquiry within a few days after the 4th May, 1921. He himself prayed to Mr. Lindsay, the Collector for an inquiry as Mr. Lindsay records. In 1922 Satyabhama Debi asked for an inquiry. In 1923 Jyotirmoyee Debi asked Mr. K. C. De, for an inquiry. In 1926 there was his memorial for an inquiry. This was never refused until 1927 when the memorial was rejected and he was told that the court was open. On the other hand false hopes were raised both by Mr. Lindsay, and Mr. K. C. De, as their statements shew. The policy then was that he must not be faced, or prosecuted, although he was giving no end of trouble, and was collecting money "in the guise of rent" to use the words of Mr. K. C. De, in his order upon the memorial. The old policy of not to ask him a question, but to leave him alone, and to concentrate on death has been carried right into the court, and the lapse of time furnished the plea of tutoring, as though the plaintiff in his former prayers for an inquiry from 1921 did not run the risk of being taken at his word. And it so happened that the plaintiff has not even been taught the alphabet,

though he has come to personate man of education. Could any amount of tutoring put into his mind the whole memory of the 2nd Kumar? The topography of Jaidebpur, the disposition of the rooms of a vast and rambling sort of house, the forests he hunted in, the 44 Dehi cutcharess out in the muffedil, the offices at sudder, the interior of the houses of neighbours, the interior of the Nalgola residence, the houses he knew at Dacca, the house of the Kasimpur Babus, the houses of the Rani's own people at Uttarpara, the brothers, the details of the Stepside at Darjeeling—and a lot of other things from the past, could all this be primed? Could tutoring enable him to identify people in Court, if any were brought or even their photos? Could the combined memories of a thousand people, aided by the skill of lawyers, and the memory of the wife, think of nothing which the tutoring could not reach, and is it stateable that the whole memory of the 2nd Kumar has been put *en block* into this alleged Punjabi peasant? Mr. Chowdhuri kept to general knowledge, and to terminology. Did he hand to the plaintiff a gun and ask him to handle at Court? Did the plaintiff break down on the articles of dress shewn except as to their correct English names? Mr. Chowdhuri, would not touch memory, except quite incidentally and on a few topics, such as syphilis, the Baradalan, and Darjeeling, and this last in the meagrest possible manner. He was afraid of falling into a trap. He was afraid of falling into the truth. I mean of course his clients whose instructions must have suggested this course,

As I observed before, if the kumar was educated, that without more, would demolish the plaintiff and nobody would trouble about memory or anything else. But the kumar I am going to shew was illiterate, except that he could sign his name, so that all that requires scrutiny in the

cross-examination is any real ignorance they would not occur in the kumar to-day, supposing he were living. Such questions as went to memory, displayed no ignorance, except that he could not give correctly the name of the husband of his wife's sister, Probbabati married in 1906 to a person of Calcutta. The 2nd Kumar never met him, and I should be surprised if he could name him—the husband of a wife's sister living in Calcutta and the mistake arose owing to the form of the question to which I shall presently come. Memory apart, as to that the plaintiff did not make any other mistake, has he displayed any real ignorance or general topics, such as the 2nd Kumar would not display? That will take me to a brief consideration of the evidence touching these matters.

I am assuming that the 2nd Kumar was illiterate except for ability to write his signatures in 1909, and that he did not know English. This topic, the extent of his literacy, will be discussed below. If the 2nd Kumar was educated in any sense, the plaintiff is not the man, and no minute examination of his ignorance of things would be necessary at all. On the assumption he was illiterate, is there any conclusive ignorance in the plaintiff of any matter falling within this general knowledge put? Was the 2nd Kumar a sort of Saheb, going about in English clothes, eating dinners in English style, ordering lunches in hotels, and eating them, sat with Englishmen at meals, and at dinner in evening clothes knew every variety of sport from cricket to polo, familiar with English furniture and their names, musical, besides being a horseman, a race-goer and a fast driver. and shikari who had shot tigers.

That he was a horseman, that he was a good shikari, that he entered ponies at Dacca races has been admitted; that he practised polo for sometime with Manipuri jockeys

is also what the plaintiff himself stated in examination-in-chief. Did he fill the rest of the bill?

It was quite clear to me during the trial that the kumar presented in cross-examination was imposing a great strain on the witnesses for the defence. The toning down had begun under the pressure of the evidence on the side of the plaintiff when respectable people began to describe the kind of youth the 2nd Kumar was, his education, his ways; but the attempts to put the Raj family in a different light from what it was persisted, and there were suggestions for hats and English clothes in plenty before the defendants began. But even then, not until the 977th witness, Sagor Babu was in the box, did it occur to the defendants that if the 2nd Kumar was to dine in the English way, he must sit down somewhere to dine. The only place suggested till then was the Baradalan, the Manager's house, and the plaintiff was asked if he did not dine in evening clothes, and the suggestion was that he had dined with Lord Kitchner during his visit to Jaidebpur. Now, the English visitors named were the Collectors and the Commissioners, and there was Mr. Meyer there for 2 years, 1902-1904. Mr. Meyer does not say that the 2nd Kumar dined with him, or dined anywhere in English style. He was examined before the trial on commission, and this particular kumar developed in cross-examination was not then in anybody's view. Mr. Rankin deposed after the shade of this Kumar had arisen, but nobody ventured to ask him if he ever dined with the kumars. Lord Kitchner remained, and there were witnesses under command, and evidence was given to shew that the kumars dined with him, and his military staff at the *Baradalan* during his day's visit at Jaidebpur, and they took other meals with him out on Shikar. The account on the side of the plaintiff is that the Lord Kitchner came on a private visit, Bara Kumar received him at the station,

and he drove to the Rajbari in the silver-mounted carriage, and at the porch of the Bara dalan the 2nd Kumar and the 3rd Kumar stood, and salamed him, as he alighted. Lord Kitchner and the military officers with him took a meal that night at the Bara dalan, and next morning, they proceeded to the jungle, after crossing the river at Kodda which I mentioned in my narrative. But in the jungle what conversation took place through the orderly of Lord Kitchner in Hindi, for the 2nd Kumar had gone with the party, not the other 2 Kumars, and the words that in Hindi were of the briefest description.

This account collected from a lot of witnesses is, I believe, the truth (P. W. 39 Dilbar; P. W. 636 Abdul Jamadar; P. W. 952, Manmohon; P. W. 907 Rashik Roy; P. W. 892; 973, 938, P. W. 8, P. W. 9, and P. W. 57, Ashu Babu, Station Master). These include officers who made the arrangements, the Mahuts who went out, the Railway servants who attended to his special train.

To prove the meals, the defd't called Alek Decosta (D. W. 43) a baburchi, and Amanulla, D. W. 61 a mahut, and Rai Saheb, of course. Decosta says that the three Kumars went out into the jungle, that the Bara Kumar was on the same elephant as Lord Kitchener, that these joined in a meal in tents at the house of the Kasimpur Babus. Amanulla says that the tents were on the other side of the Kodda, 2 miles from the house of the Kasimpur Babus, and that the 1st and 3rd Kumar did not go out at all. And Rai Saheb talks of the three kumars sitting at dinner with Lord Kitchener and Col. Birdwood and Captain Fitzgerald. I do not believe a word of this evidence—that the kumars sat with Lord Kitchener and the Manager, a Deputy Magistrate, also did so.

It must have occurred to the defence, though late, that the dinners at Bara dalan nobody was going to support, so that

they began to think of dining room; and as each kumar had a *baburchi*, that was going to become the foundation of a superstructure of untruths. To Sagor Babu, the 977th witness, was put the case that the room next but one to the west of the 2nd Kumar's baitakhana was the dinning room of the 2nd Kumar. It is the room No. 121 on the map. The baitakhana is the room no. 115. As to this room no. 121 Mr. Chowdhuri asked:

Q. This is the 2nd Kumar's dinning room?

Q. There were tables and chair and aside-board there? The witness answered both in the negative.

Now, the account given by the plaintiff's witnesses including the khansamas whose duty it was to attend to meals, and the nephews is that the 2nd Kumar used to take his meal on the verandah, north of his bed room—the room north of his baitakhana. He would sit on the floor, and take it as Indians do, and his food was rice, and the usual curries, and these would come from the *Andar*, cooked by Brahmans, but the *baburchi* and the *khansamas* would cook things too, and these would take in the usual way, with his *moshahebs* called clerks. The things cooked by the *baburchi* were cutlets or chops which the things as well as the words, are Bengali in these days and in those days too.

This account remains—this sitting, and eating with fingers, but the witnesses for the defendants add the dinning room as an occasional resort for dinners. This began with the 2nd Rani who had nothing to do with the Kumar's meals, as I said in my narrative above, and then a lot of witnesses come, and speak to the dinning room, so that the cross-examination of the plaintiff might stand. There, it is said, the 2nd Kumar would sometimes take his meal at table, and use his fingers or knife and forks. After the evidence of Rukmini, a *khansama* of the 3rd Kumar (D. W.

21) it was not possible to make this last his usual habit, seeing that he said that he oftener sat on the floor on the verandah and in this room.

We had seen the contents of this room, as put to Sagor Babu, a table and a few chairs and a side-board—the word put to the plaintiff. As the trial progressed, the room began to fill. Phani Babu puts in it a ‘dinner waggon.’ The old punkhapuller had made the mistake of saying that he pulled the punkha only in the *baitakkhana* and in the bed-room, so that Rai Saheb when he came, put into this room a punkha. There was difficulty, however, about the dinners. The list remains in Phani Babu’s book, and these become the so-called clerks, people who came to fill small posts in the estate, and none of them were paid by the estate except one—the low associates of Mr. Meyer’s present and passed testimony. Now the witnesses on the plaintiff’s side had said that this room no. 121 was the 2nd Kumar’s “godown,” i.e., the room in which were a couple of almirahs for his clothes, and odds and ends, including bags of grain for his birds, and that the room between this and the *baitakkhana* was the room for his servants and *moshahebs* to sleep in, this servant’s room the 2nd Rani calls his ‘dressing room,’ so that the other room might be the dinning room, and Satya Babu confirms her by saying that this room—the room between was his ‘godown;’ but the old *khansama*, Rukhini, and the old *punkharwalla* (D. W. 41) calls this the room in which the servants slept, so that the punkhaless dining room in which the defendants if would, if they could, lay the table for the shining cutlery, cut glass, white napery, watch-eating servants, becomes a godown indeed. The whole evidence is ridiculous and false. The Kumar’s were unmitigated Bengalees, with no sort of English notions or ways. They must have seen a spoon, and a fork, but they had their own words for it:

Rukhmini, for instance, calls them "katachamij-chaku," even as the result of obvious tutoring.

The dress could be disposed of in a few words. It has come to be agreed that the usual dress of the 2nd Kumar was dhuti worn double, or lungi and banian, as upper garment (D. W. Phani Babu, 92; Satya Babu D. W. 380; D. W. 290 D. W. 43). The 2nd Rani would not admit lungi, it is rather vulgar—but Phani Babu admits it, and a certain tailor's bill compels Rai Saheb to admit that he would put on pink and yellow shirts, Jyotirmoyee Debi spoke of her love for bright colours, but he, Rai Saheb, reiterates that it was light colour, for his notion is, as he says, that refined people do not wear bright colour. He had not the courage to say nor anybody else that the plum coloured stuff produced by the plaintiff and sworn to be his was not his. He went to Darjeeling in a lungi (D. W. 290 Birendra). He would generally be in lungi even at Darjeeling (D. W. 290) and was seen in lungi by Rajendra Sett, and excited his surprise (Rajen Sett for the defendants, on commission). He would put on English clothes when going to meet high officials (D. W. 290; Satya Babu; and D. W. 21, Rukmini, etc). At Shikar he would go out in dhuti, or in khaki. That is also quite clear. One tiger photo of his was in dhuti. Mr. K. C. De, never saw him in a hat, he wore that gold embroidered cap, and his English dress was obviously of ceremonial kind—a durbar coat and a frock coat and tail-coat which he says he never wore. A tailor's bill running from 5|1|03 to 6|8|06 (Ex. 221) is in the name of the Bara Kumar. It is said it includes items for the 2nd Kumar as well, which, looking to it, I think likely. I see no lounge suit, except possibly one, and the rest mostly ceremonial clothes. If he wore only such clothes, and only to see Sahebs, what did he know of English clothes, much less their names?

And how is his "Folat Coat" "worse than Frog coat" of Phani Babu of riper experience, or his 'bridge' for breeches? Birendra's word for breeches or braces is 'brasaj' (D. W. 290). Chhoto Rani calls breeches 'breejich,' everybody calls a pair of trousers pantaloons or 'pans' and the local word seems to be 'pan' (D. W. 394). One English-knowing gentleman deposed before me. He D. W. 69 was in English clothes. He used the term "Jodhpur bridge," and admitted he did not know the names of the varieties of coat in English dress. Tailors have all sorts of names for their stuffs. You might have worn 'ball-brick flannel' without knowing it, and Indian putting on English clothes to see Shahibs would trust to tailors to do the needful without troubling about names.

Turning now to the sports, and the plaintiff's obvious ignorance of them, it has not been shewn that the 2nd Kumar's ignorance of these was less, or would be less to-day. Take cricket and football to begin with. Phani Babu makes him play both till the Rajah's death in 1901. Nobody else goes so far. Innumerable witnesses on the side of the plaintiff were cross-examined to get a footing for the case as regards the sports, cricket and football included, but they all say that the 2nd Kumar never played tennis, cricket, or football. It is useless to name them all. There was once in 1899 a cricket-match on the Maidan and there was a football match too in 1903. Some of the players have deposed (P. W. 76, 151, 83, 225; 670, 549, 696, 758). Nobody on either side says that the Kumars, any of them, played, though they doubtless watched the thing. There was the high school, and the boys of that school played football, and the evidence of Manindra Babu is that it was he who opened the football club for the school, and the 2nd Kumar got for the club the things they needed, and paid for them, such as bats, balls, stumps, pads, gloves, uni-

forms, and boots. This evidence was given because of the suggestion to Jyotirmoyee Debi that books showed football boots ordered for the 2nd Kumar. It was false suggestion, and the attempt to get the case supported by Manindra Babu failed, seeing that even Phani Babu would not say that the 2nd Kumar played football after 1901, and Manindra Babu was speaking to 1908. Old *Khjanchi*, still in service, examined for the defendants gave the whole case (D. W. 364). He begins by saying that the 2nd Kumar played football and cricket. In cross-examination he says he played football and cricket up to the time he was 8 or 9 or 10, not later. He played in the sense, so he says, that he ran about with a football. The witness had seen football matches, but does not know the terms. The 2nd Kumar knows nothing about football and to-day he would not know more than the plaintiff.

That leaves tennis, billiards and polo. Polo will require a little consideration but as to tennis and billiards the same lot of witnesses, or the witnesses under the defendants' control, come, and say that the 2nd Kumar used to play tennis and billiards. There was, of course, a billiards table at the Rajbari in the *Baradalan*, and a tennis court in front of it. The evidence on the side of the plaintiff is that the Bara Kumar played tennis and also Jogen Babu, Rai Saheb, and also Satya Babu when he came, but the 2nd Kumar did not play it, not Chhoto Kumar until after the death of the Bara Kumar (P. W. 660, 881, 806, 977). As to billiards, the evidence is practically the same, except that Chhoto Kumar played it sometimes (P. W. 907) Bara Kumar would sometimes meet Sahibs and affected billiards, and engaged for a time one Ramphal, a champion or something, to improve his play. I see no reason whatever to prefer the testimony of the defendant's witnesses on the point—a set of case-ridden men trying

to construct a fictitious Kumar, looking to their other efforts. The 2nd Kumar did, I believe, as one witness says, despise tennis as a "woman's game"—he was that sort of man, fond of elephants and *shikar*, and horse, and woman, without pretensions of any kind, such as make some men take to sports which they do not enjoy but which it is the fashion to know. I find that the 2nd Kumar did not know billiards, or tennis, and the plaintiff has not shewn greater ignorance than he would have done if he were in the box. Lt. Hossain need scarcely be mentioned in this connection. He came to prove billiards, and talks of the 2nd Kumar and the 3rd Kumar, coming to his house to play billiards when they were staying in Park Street. What was in the year 1904 when the 2nd Kumar had gone alone to Calcutta after the dismissal of Meyer. Chhoto Kumar did not go to Calcutta until after Mr. Rankin took possession and then when he went he stayed at 3, Wellington Square, Calcutta.

As to Polo, the plaintiff says in evidence-in-chief that there was a polo ground at Jaidebpur made by Mr. Meyer. "I learned to play polo a little. I and Chhoto Kumar, not the Bara Kumar."

I consider this statement extremely valuable from one point of view. Mr. Chowdhury was suggesting that his questions on tennis and that sort of thing had not been expected by those who had primed him and the result was the discomfiture that was occurring. Now this polo was certainly in the mind of the tutors, if any. Now what does the cross-examination on polo shews the plaintiff knows nothing, absolutely, about polo at all. It is clear looking to his illiteracy, and this known topic that the plaintiff has been put into the box exactly as he was in 1921. He could not be worse, as regards literacy, and the sports. Now as to the polo it is agreed that polo

of Sorts commenced before the arrival of Mr. Meyer, and it was Mr. Meyer who levelled the maiden in front of the Rajbari, and made it a polo ground. It is also undisputed that there were three Manipuri jockeys—polo originated at Manipur—and one of them was Chandraman Singh. This man has deposed for the plaintiff. The account he gives is this. He was appointed rider to the 2nd Kumar in about 1901 (indicates that), he remained his rider for a year and-a-half, and then he went over to Chhoto's service, and remained in his service till about 1910. He says that two or three months after he entered service, the 2nd Kumar played polo for 15 days or so, with him, and Rebati Singh, that was all. Chhoto played polo too and continued it, and then would come to play at Dacca Club, and the witness would come too, not to play, but with him and Mr. Meyer would come to play at the Club, and that at Jaidebpur itself there was afterwards no polo at all, except for a day after the Chhoto Kumar's marriage in which Europeans and Mr. Meyer joined. This marriage was in January 1903. He adds that Mr. Meyer brought 6 polo horses from Calcutta and 4 of these would be kept at Nalgola, and the rest at Jaidebpur. In cross-examination the witness says he does not know a "pelham bit", though he knows *kajai* and *dahana* to be used for soft and hard mouths respectively, that he did not buy any horses for polo at Dacca, nor did he go to Calcutta to buy horses, that a lot of horses would come from Calcutta. He mentions the points he would look at in a horse, but does not know "14 hands or 15 hands."

If this was all the practice that the 2nd Kumar had in polo—no match, be it noted, but practice—I should not expect him to remember anything of it or terms like "near side back hand" particularly as there are Bengali words for it is used by Manipuris. They used the word *baji* for

chukker and Phani Babu admits other terms for the English ones put by Mr. Chowdhury; but quite apart from that I would not expect the plaintiff to remember anything of the play, after 35 years, anything of what he knew.

On the side of the defendants, witnesses were found to say including Rai Saheb and Phani Babu, that the 2nd Kumar played polo till he went to Darjeeling in April, 1909, and it was also said that he was a member of the Dacca Polo Club, or what was called Dacca Amusement Club. This club originally bore the name of Dacca European Club, as Atulla, a former clerk of the Club has said (P. W. 429). Two receipts signed by the Secretary of the Club were produced as shewing that the 2nd Kumar was a member of the Club (Z 98, Z 99, Z 100). The receipts and the letter by the Secretary were issued to Kumar R. N. Roy. The receipts are dated January 1908. Two of these were for subscriptions for polo, another for polo and for a race-meet, and the letter, a bill for the entry of a pony called *Pagli* for a race.

Nearly four months after the plaintiff's cross-examination the defendants began to file a lot of vouchers and other papers to shew that the Kumar knew the things which the cross-examination shewed the plaintiff did not. I dealt with the petition for leave to put these in, and refused it, in view of the Ord. XIII, R. 2, and gave full reasons for my order. A witness was permitted, however, to refresh his memory by such of these vouchers as were handed to him. His evidence upon such questionable documents is that in 1903 the 2nd Kumar was going to Dacca to play polo.

The whole account is practically disproved by certain facts, Mr. Meyer was not asked a single question about polo. Satya Babu said in examination-in-chief that the 2nd Kumar had given up polo some two years before he

left for Darjeeling. That shews, what was otherwise obvious, that the club receipts of 1908 related to Chhoto Kumar whose *initials* were the same, R. N. Roy. Admittedly, Chhoto Kumar was a member of the Club, and his receipts were sought to be fastened on the 2nd Kumar. That explains why there are not two sets of receipts. One of the club documents relates to the entry of a pony called *Pagli*, in the races. Billoo Babu, P. W. 938, was asked in cross-examination whether that was not a pony of the 2nd Kumar. He said it was a pony of the Chhoto Kumar. Phani Babu and Rai Saheb say, of course, that was Chhoto Kumar's pony. If it were so, Atul Babu, the Club clerk (P. W. 429), would have been asked on the point, the racing calendar would have come to shew it as it did in the course of 2 points of the 2nd Kumar—entered in the races in 1904—this has nothing to do with polo and instead of 2 solitary receipts for 1908 relating to the same member, 2 sets of receipts, and 2 payments would have been proved. The oral evidence on the vouchers that the 2nd Kumar came on such and such date in 1903 to Dacca to play polo cannot go further than the vouchers filed nearly four months after the point arose, and in which it would be easiest thing in the world to insert the name of the 2nd Kumar, or couple his name with the 3rd Kumar, as seems to have been done on some of the vouchers, [See X (208), X (63), X 453, X (208)]. Vouchers of this kind have been produced in this case. A voucher dated 19th September, 1903 [marked X (3)] shewed a purchase of polo stick and polo banians for Rs. 26-8. On this has been inserted in red ink; "For 2nd and 3rd Kumars". Apparently the cash-book would not support it, and the document was not tendered at all. In 1917 took place what has been called an allocation to adjust accounts as between the three Ranis, so as to debit

to each the personal expenses of her husband. The allocation officer made the allocation upon these vouchers, among other documents, and these purport to bear his signature but the report was not put in, though this would shew at a glance whether a particular voucher was debited to the 2nd Kumar or to the 3rd. I find that the 2nd Kumar was not a member of the polo club at all, that he did not know more of polo than what the plaintiff admits, that Mr. Rankin who admittedly played polo with the 3rd Kumar at the club was making a mistake when he said that the 2nd Kumar not a member, played thereto, and the reason why the 2nd Kumar did not take to polo was that he was accustomed to hold the reins in his right hand, as he said in another connection. The truth of the matter which I find upon the evidence on the other side was told by his clerk Birendra (D.W. 290) in a former case. "When he (2nd Kumar) used to remain at home he used to go out on elephant, and on tom-tom; apart from that he did not take any other physical exercise" (Ex. 350). I find that the plaintiff has not shewn more ignorance in these sports than the 2nd Kumar would do if he were in the box.

As to *Shikar* and guns and horses, he has displayed complete ignorance of English names or terms, but not of the subjects. He was asked:

"If you are the 2nd Kumar you certainly knew the English words as a *Shikari*, but forgotten them for your illness?

With the 2nd Kumar, *Shikar* was not a thing taken up by an educated man as a fashionable pursuit, but a play which he had begun in childhood, and almost a daily pursuit. But in the village uneducated hunters have their own words for guns and their varieties, and the shot and the ammunition. Bhowal being full of forests, there are numerous illiterate *Shikaris* (P. W. 26), and they know

how to shoot, though they do not know the English terms, or cannot explain why the muzzle-end is smaller than the breech-end. A number of *Shikari* witnesses examined for the plaintiff know the thing but not the name, and for English terms they have Bengali words, such as:

Target—Chandmari.

D. B. B. L.—Donala kartus.

Cartridge—Kartus.

Foresight—Machhi.

Trigger—Mair.

Cock—Ghora.

Range—Palla.

Stock—Kunda.

Barrel—Nali.

Muzzle-loader—Gutaina.

Bullet—Guli.

Shot—Chharra.

Single-barrel gun—Ek Nalia.

A fairly wide range of terminology which I have collected from the witnesses, which are not disputed, but of which Mr. Chowdhury kept clear consistently with his then case that the Mejo Kumar, being an educated man, would know them of course. Even an educated *Shikari* who deposed before me and who mixes with Sahebs, and has picked up words, and who was on one occasion with the 2nd Kumar in *Shikar* and who is a respectable doctor practising in Dacca, says that he knows the names of the parts of a gun in a Bengali way, and he says that he knows some of the terms put by Mr. Chowdhury, but he says also that bullets like lethal bullets, contractile, rotary, rotax have now come in vogue and that 20 years ago he did not see lethal bullets in vogue in any shikar (P. W. 1002).

The manner in which the 2nd Kumar went out in *Shikar* is not in dispute. He would go on an elephant

in dhuti, or khaki and on the howdah there were 4 seats (D. W. 61). With him would go Macbin, Anthony, Money—the three names given by the Rani, and also Hari Mistri and Edwin Fraser (D. W. 51) and one or two Babus” (D. W. 61). Certain other names have been given by the witnesses: Umed Ali, himself a Shikari, (P. W. 26), Jatin (P. W. 9) and Kesab (P. W. 15). Macbin and Money would sit on the 2 back-seats—these are Native Christians and tenants of Bhowal and it was the business of Money or Macbin to load on the *howda*, and it was the duty of either to keep the guns (P. W. 15, 26, 977, 938, etc.). A *khansama* will be on the same *howda* and hold an umbrella over the head of the 2nd Kumar and there were grooves in the *howda* for gun-rests.

This is the manner in which the 2nd Kumar set out to shoot, and the evidence on the side of the plaintiff is that he never carried the catridge-belt which the men on his Howdah did, it was their business to hand him the loaded guns of which some would be carried.

Mr. Chowdhury suggested to Sagor Babu, (P. W. 977), that of the 4 guns 2 were rifles, and that the 2nd Kumar did not shoot tigers with shot-guns as the plaintiff said, but with rifles. There was a suggestion that one could not, or does not shoot tigers with shot-guns. Phani Babu, for the defendants, was ready with his terms. Did the Kumar know cordite? Oh yes. Breech? Muzzle? Foresight? Backsight? “12 bore”? and so on, and he said yes, and added that he was a shikar companion, and that for tiger shoots the 2nd Kumar used rifles ordinarily. The plaintiff said that he used No. 12 & No. 16 guns in big game shooting, though he admitted he had a rifle, and indicated its spiral groove. In the 2 tiger-photos taken just after his return from shoot the gun in his hand is a shot-gun. Phani Babu,

shewn the photo could not deny it, and there was direct evidence before this point had come to the forefront that the gun in the photo, A 10, is a shot-gun (Billoo, P. W. 938). In a photo taken after a tiger-shoot in which Phani Babu occurs the guns are shot-guns. Phani Babu talked a lot about rifles, and their long range, and mentioned a Winchester rifle with it had been suggested, was a favourite rifle of the 2nd Kumar, but handed a Winchester rifle at Court, he could not handle it, and it does not seem tiger-shoot from elephant back after beating, is done at long range, and I accept the evidence of the plaintiff and a *shikari* (D. W. 1002) that in shooting a tiger from an elephant you shoot by the *hate-r-andaj* (the guess of the hand) and not by sight. The plaintiff says he does not remember whether he shot birds, which seems incredible, unless he was referring to his later habit, and it seems to be the truth that his servants would load his guns, just as servants bathed and dressed him, looking to the evidence of Anthony Morel for the defendants, who says that "the 2nd Kumar would go out every day to do shikar on an elephant," and "I would go and I would load the gun." I consider that out of this English terminological cross-examination no real ignorance had emerged if the Kumar did not know English. It is unsafe to find from the ignorance of a word, the ignorance of a thing, if the word, not in vogue in Bhowal, was used. The plaintiff does not know, for instance, the word *barud*, a common word in West Bengal for gun-powder. It turns out that the word in Bhowal is *baruj*. Even Phani Babu had to admit it, though he adds that the word *barud* is also known.

Looking further into the plaintiff's mind, I see no ignorance of the varieties of the carriages which the family used to keep from the fact that the plaintiff does not know the word—*char-a-banc*; and I doubt whether the thing

was there, or the name known, unless I rely upon Phani Babu's testimony, and prefer it to that of others. No other witness on the side of the defendants has heard the word, or they would be asked, and one witness asked by Mr. Chatterjee—the old *Khajanchi* (D. W. 364), admitted that he never heard of it. I cannot take it for granted, “if he was not a well polished and well-educated aristocrat” that the Kumar knew the word *char-a-banc*, and cannot find that the family owned it. As to “the American cart” the plaintiff did not know what it was but the moment he was asked whether it was not a species of tom-tom, the thing seemed to dawn upon him; “May be, yes, it is a tom-tom on 4 wheels. Its name I do not remember.” As to the knowledge of horses, the ignorance of the words—snaffle, curb, leading rein, 9th Lancer bit, Pelham bit, and the English names of the colours of horses were no test if the man was illiterate, or even ignorant of English. Phani Babu had to be coached up in these terms, and even then he broke down on the word *shewbald*, though he righted himself after a little trouble.

As to the knowledge of the names of the articles of furniture, I recollect the evidence touching the furniture in the Rajbari on either side. Bara Kumar's *baitakhana* was furnished in the Bengali style—a carpet spread on the floor to sit on, a couple of almirahs for keeping the musical instruments, and Phani Babu adds 6 marble “teapoy” and 2 “cushion” chairs. In the 2nd Kumar's *baitakhana* there were a couple of *chaukis* over which was spread a bed to sit on, and a bench with back which Phani Babu calls a ‘tool’, the local word, as he says, for a bench. Phani Babu adds a ‘teapoy’ and 4 “cushion chairs”. The account as to the furniture in the Rajbari will be found in the evidence of Sagor Babu (P. W. 977) and Billoo (P. 938), and in Phani Babu (D. W. 92) to mention the principal

witness besides Jyotirmoyee Debi ; and much later, Birendra (D. W. 92), added a writing table in 2nd Kumar's room for obvious reasons. There is not much difference in the accounts given, and what difference there is, makes no difference to the issue. Sideboard and cupboards occur as words in Phani Babu's note-book, and occur as things in his evidence. It may be that there were these but I do not believe that anybody used those names. Phani Babu himself broke down on cupboard, and I do not think that anybody uses those terms in Bengal, except in anglicised families.

The only topic in which there is arguable ignorance is the topic of the races. It is an admitted fact that the 2nd Kumar used to go to the Dacca races, and he had racing ponies, and 2 of these were entered for a race on the 12th January, 1904, according to the Racing Calendar published by the Calcutta Turf Club, and shewn to me at Court by Mr. Chowdhury for the defendants. There is no evidence there was such an entry later or even earlier, but it must be supposed that the 2nd Kumar knew some thing about the races unless Mr. Meyer was deriving the thing in his name. A fact connected with the Dacca races is that the races stopped after the death of Mr. Garth, a well-known personality of Dacca, which took place about 1904, looking to the evidence of *Atulla* Babu, the Amusement Club clerk. 1904 could not be exactly correct, but it must be sometime after, but nobody denied the connection of Mr. Garth with the races and their termination after his death until it was afterwards revived. It may be said therefore that the 2nd Kumar's money of the races would relate to the year 1904 or thereabouts, and not later. He was then 20.

About the Dacca races the plaintiff was not asked a word except that was asked if he had been to the Dacca

race-course. He said: "I have seen it. It has considerably changed." Mr. Chowdhuri instantly left the topic:

Asked about Calcutta races he says:

"I heard of the races in Calcutta. I might have gone to them once or twice. Viceroy's Cup is a race that takes place every year. I do not remember the name of any horse that won the Viceroy's Cup before 1316."

Q. Can you name any horse that won the cup?

A. My horse or anybody else's?

Q. Your own to begin with?

A. I myself won the Viceroy's Cup.

Q. In what year?

A. I cannot say. I myself rode the horse that won the race, but I cannot say whether it was Viceroy's Cup.

Q. Where was the race?

A. At Tollygunge.

He does not know the meaning of steeplechase. He does not know how the handicapping is done, but knows that it is done, to give the horses an equal chance, knows that stones and pounds are used for the purpose, does not know the meaning of the figures 8 or 7-12, put against a rider. In re-examination, he explained what he got after winning the Tollygunge race was a hunter. A witness supports that. Nobody denies that, and nothing has been produced to shew that it was not a fact. I have therefore asked myself whether the ignorance displayed, assuming that the 2nd Kumar was not literate, is more than

what the memory could lose in 29 years, assuming again that he had the experience he has deposed to of the life of a Sanyasi for 12 years, without the local associations that would keep alive the memory. On this assumption. I do not think that the ignorance is such as to displace mental identity, when the cross-examination avoided the memory, and the memory of the Dacca races altogether, although it is obvious that on this point there had been no tutoring. It is a remarkable fact that the plaintiff was asked quite incidentally about Mr. Garth, and in a different context. He said he was Manager of the Nawab Estate.

Q. He was Manager in 1316? (which was a trap)-

A. Can't say.

"In 1316 he had been dead. Can't say in what year, but he had been dead before I went to Darjeeling. I can't say how long before. Not 10 years before, but can't say if it was one or two years' before. Can't say if it was 3 or 5 years before." It seems to me that this is memory.

I should add that a witness was called towards the end to shew that the 2nd Kumar actually present at the Viceroy's Cup race in 1905, and was speaking English. That evidence I propose to go into when I deal with the topic of literacy, and it will there appear that the evidence was unreliable although there is no inherent improbability in such presence.

The plaintiff does not know the terms like H. E., H. H., C. S. I., I. C. S. or the meaning of "How do you

do?" or "Quite well". He has a notion of I. C. S. and though he does not know A. D. C. has a notion of an Aid de Camp, when pronounced. These notions are inconclusive, so far as they shew knoweldge and the ignorance equally so, if the Kumar did not know English and was illiterate. Curiously speaking, he knew the word "crushed food"—it is given to horses he says—though the word was inserted in the middle of the words for English clothes.

A portion of the cross-examination went to shew that the plaintiff was not a Bengalee at all. It will be convenient to deal with that when I discuss that topic below. One part of it however may be dealt with at once.

In answer to a question he said: "Rajah Rajendra could play on *tabla* well, he could not sing well. He was very fond of music." This is true, looking to the evidence on the other side.

He was asked:

'Can you quote a line from a single Bengali song you heard before 1316?'

A. I can't.

This seemed odd, seeing that the Rajah was fond of music, kept musical *ostads*, used to have music in his *baitakkhana*, and after his death there would be music in *baitakhana* of Bara Kumar, where there were musical instruments, and at the Jagadhatri Pujah, and also at Punnya would be held the *Gan jatra*, dances, *kabis*, and there was stage in the *Nautch ghar* and theatricals would be held. All

this appears from the witnesses on the side of the plaintiff, and quite apart from all this, it is impossible that one did not pick up a line of a song. As to the 2nd Kumar's musical efforts, the evidence on the side of the plaintiff is that he could play nothing, but could sing a snatch or 2, and Jyotirmoyee Debi, the sister, says that he would sing while bathing, the words were not intelligible, but one began like this :

Jhilimili pania hare nanadia.

(water are sparkling, Oh, Nanadia).

In cross-examination she says that she could give a line or so of other songs he would sing, such as, *aya lo ali kusum tuli bharia dala.*

It may be noted that these two songs are in the list of "2nd Kumar's songs" in Phani Babu's note-book.

How is it then that the plaintiff could not give a line of any song, though even an impostor living 13 years in a Bengali family, would pick up one, particularly as there is evidence on the side of the defendants there would be *kirtan* at his house at Dacca (*vide* Durga Prosad on commission), and there is hardly any Bengali Hindu family in which songs are not sung, and which are not visited or even infested by beggars who sing and ask for alms. The reason is plain. Among our people there are few, with the exception of professionals or men who sing well, or have the detachment that education gives, would admit that they can sing, and even those who sing well require a

lot of coaxing before they will sing in company, and then they would begin in a shame-faced apologetic way. I believe nothing would induce a cultivator, or any illiterate man to admit in a Court, that he knows a song, much less to give one. It is a shame in crowd, though it may be solitary pride. Apart from this national trait there are things which are too silly to be said, but which can be sung; and if the 2nd Kumar's songs were of the kind in Phani Babu's list, most of them are low and all of love, mostly of the guilty sort—he would not, unless he was educated, confess, or repeat them in Court. He would think it the height of impropriety to utter them in the middle of solemn proceedings in crowded Court. An educated man will take a song, whatever it is as a literary phenomenon, just as a surgeon takes certain parts of the body. The 2nd Kumar would be incapable of that detachment.

With an eye to another issue—the literacy and the style of one of the disputed letters—Phani Babu said that the 2nd Kumar would be prompter in the theatricals that were held. That evidence was displaced by his own admissions as I shall shew below.

I do not believe the evidence that the 2nd and the 3rd Kumars knew how to take a photo, though there was a studio in the house. There was a salaried photographer, and the Bara Kumar knew how to take a photo, but it does not follow that the other two did. The direct evidence is

that they never took a photo (P. W. 34, 660, 907, 938), I see no reason to prefer the evidence on the side of the defendants, the evidence of people who have come to construct the Kumar put in cross-examination and who have on various topics I have dealt with have given demonstrably false evidence and whose untruthfulness further appears on other issues.

My opinion as to this cricket-tennis cross-examination is that it was just what a person minded to defeat the Kumar would design; that the ignorance it discloses is not more than could be expected in the Kumar himself that it deliberately avoided memory, and set a general knowledge paper which the Kumar could not answer, but any body, not the Kumar, could, provided he was an educated sportsman which the Kumar was not.

I turn now to the questions that touched what must have been within the memory of the 2nd Kumar. The answers to these were correct, except that the plaintiff could not give the name of husband of the 2nd Rani's sister, a Calcutta youth, now dead, whom the 2nd Kumar had not met and could not answer certain other questions. The questions were put quite incidentally and they were few, and the answers unaided by the context. The questions he could not answer were of this kind: who was the Lt. Governor in 1309? or in 1310? or in 1311, 1312, 1313, 1314, 1315, 1316? who was Risley? Lord Minto? Yes, of him I may have heard. Can't say who he was, or in what

year he was in India. Can't say who were Commissioners and Collectors in 1309 to 1316, but Rankin Saheb was the Collector once later Commissioner. Yes, before 1316, can't say how long before. Mr. Garth? Yes, he was manager of the Nawab Estate. Can't say if he was Manager, 1316. In 1316 he had been dead. Can't say in what year, but before I left for Darjeeling. Can't say how long before. Not 10 years before, but can't say if it was 1 or 2 years before. Can't say if it was 3 or 5 years or more before. You know Ganga Narayan Roy at Dacca? Knew of one Ganga Charan Doctor. Kungabehari Chatterjee? I don't remember. Bankim Chatterjee? He belongs to Calcutta. Who is he? He has written books. Can you name any? Never read his books. He is dead. Can't say if in Calcutta.

This sort of memory test displaces nobody. On the the otherhand the answer about Mr. Garth looks uncommonly like genuine memory—an effort of memory, and the content is brought out. Tutoring would have a different look. I do not rule that out from the accuracy of the answer in any case, but I scan at the answer, and see traces of memory, knowing as I do, the whole history of the family, and the kind of difficulty that tutoring would have to surmount, and the way the answer came. I would give some instances. The *Baradalan* was being referred to as "the Guest House". The plaintiff was asked:

"How far was your room from the living room of your elder brother?"

A. Which room of his; *baitakkhana* or what?

Mr. Choudhuri left the point. Later, he asked how far his brother's room was from the Guest House". The plaintiff answered about 50 cubits off. It was correct.

Q. You heard of S. B. Bardhan?

A. Sasi Gobardhan. We used to order clothes from him.

Asked in cross-examination about whether he was in the Dacca Collegiate School, he says he was put into it when he was 12 or 14. Asked again, says in the bottom class. Can't give the name of the class. Might have heard "the 8th class". He was there for 10 or 15 days, he had said in examination-chief. Obviously there was no tutoring or he will tell a little more. The defendants suggested later the 2nd Kumar was at this school for 2 years. Later, they led evidence to shew that he was there for less than one year. The 10 or 15 days the plaintiff mentioned has not been disproved, as I shall shew below, and the less than one year the case made later, is no more true than the 2 years the defendants started with.

He tells us, in substance, what takes place at an interview with a Lat Sahib, adding that he never saw him, or any English man, alone, but the company with his elder brother who alone knew English. The truth of that will be investigated below.

Was Anthony younger brother of Macbin? (Trap). No, he was brother of Muni.

Little bits like this emerged, out of the few questions: that ventured to touch, with the greatest timidity, the memory of the Kumar, and the only topics that touched it otherwise than incidentally, were syphilis, and Darjeeling, and this last as meagrely as possible. What he says about syphilis remains the only account in the case, and what he said about Darjeeling has to be investigated, but the questions put to him touching this matter did not touch any of the points that arose in that inquiry later.

Another topic in which there was some attempt to explore his mind is the *Baradalan*—the manager's house, the disposition of the rooms in it, and the furniture in them. Every body calls this house *Baradalan*, Satya Babu refers to this as *Baradalan* in his diary, but a confusion was produced between this and the buildings on either side of the *Nutchghar* where Indian guests would put up. Even so, I am not satisfied that the ignorance of the English names of furniture and that sort of thing is conclusive.

Two details in the plaintiff's evidence has been very much attacked as untrue. One of them is the white fox which he said was one of the animals in the *chiriakhana*. The witnesses who spoke to it were cross-examined as though they had come to back up a mistake, but a witness for the defendants admitted having seen the white fox in the *Chiriakhana* (D. W. 267, Golam Nabi). The plaintiff had said that he used to mount an elephant by stepping on his trunk, and then hoisting himself upon him by

holding his ears—a feat of which few are capable. The defendants called witnesses including the Rani and Mahut, Abdul Munsî, D. W. 37, to prove that he could do nothing of the kind, but that there were platforms at various points for getting upon an elephant. He would admit so far that the 2nd Kumar could drive an elephant; and but one witness for the defendants had seen the 2nd Kumar mount an elephant in the way the plaintiff says (D. W. 226, Abdul Hamid). Lastly, the plaintiff had said that he used to hold the reins in his right hand, riding or driving, and the contention was that that was an impossibility. Now the one thing about the 2nd Kumar as to which all are agreed is that he would drive a tom-tom at Jaidebpur and in the streets of Dacca. Innumerable witnesses spoke to the style of his driving—he drove very fast, the horse very spirited, and he held the reins in his right hand (P. W. 167, 326, 387, 530, 489, 736, 666, 789, 801, 580 and others). Of these I should specially mention Brojogopal Basak, a very respectable and wealthy man of Dacca, because of the detail he gives. He says: He used to drive very fast, sit diagonally, and hold reins in his right hand—that was his style. The witness drives a tom-tom himself questioned, he cannot give the name of the kind of tom-tom he drove.

Q. Was it a dog cart, cabriolet, or American Cart?

A. The place where one places one's feet is half-circle like.

Seat so high (shew 3 ft and 6 inches from the ground). Two could sit. Sometimes three. There would be some body with him sometimes. When he had a companion he would not stretch his leg over him. Asked what species of tom-tom the witness had, he could not give it a name. The witness is not an educated man, but looking to his income it will be difficult to say that he could not or did not possess a tom-tom.

Now it has not been disputed that the plaintiff, this Sanyasi, was driving a tom-tom during his 37 days' stay at Jaidebpur, and later at Dacca. None of the officers of the Court of Wards who were at Jaidebpur at the time and who have deposed and none in fact, not even Phani Babu could deny it. The witnesses who speak to the plaintiff driving at Jaidebpur are: P. W. 977, 975, 918, 806, 938, 939 and more have seen him drive at Dacca (P. W. 450, 472, 602, 666, 739, 789, 812, 833, 915, 918, 901, 792, 961, 977, 1009, 1015, 1002, 970, 976, 918). Their evidence is not questioned. There is no evidence to the contrary. Mr. Mayer saw the plaintiff in a tom-tom at Ramna, Sarba Mohan for the defendants (on commission) went to see the plaintiff one day, and saw him drive away in a tom-tom. Only one witness for the plaintiff, Jatin said that the 2nd Kumar used to hold his reins in his left hand, and he wanted to say that as an exceptional trait. Obviously the left is a slip for right. I see no impossibility in driving with a right hand, nobody is suggesting that he was left handed but that was

his way. The fact that the plaintiff drives a tom-tom and was seen driving it between the 4th May and the 7th June 1921 being undisputed, its novelty in 1921 in a Sanyasi remains, and I see no reason to reject the evidence that he drives in the old style in the style of the Kumar.

Lastly I may note one word to which some importance was attached by the defence. Asked to name the famous sweetmeat of Bhowal, he called it *dadhi sandesh*. Evidence was given to shew that it is called 'Daudi Sandesh.' The witnesses on the side of the plaintiff say that it is called daudi or dadhi, the latter being the form used by the lower orders. Now one witness for the defendants calls it *daudhi sandesh*, and that slightly improved would be *dadhi*. Now illiterate people have a habit of improving common words in court is to what they conceive to be more elegant. I recollect that at one point in his deposition the plaintiff used the word Jigai, a corrupt form of Jignasa. Jigai is in vogue in Bhowal and I was asked to take it down as a thing in his favour. The plaintiff instantly corrected it into Jignasa, the more elegant form.

In Judging the cross-examination of the plaintiff, and the wordy mass heaped upon him one must try to consider how an illiterate mind responds to words not known or familiar to it, or words taken apart from any context; and one sure way of making such a man lose his head is to put to him puns or pass from word to word, from meaning to meaning. This sort of thing has happened, and I shall have to give an

instance or two when I come to the topic as to whether the plaintiff is a Hindusthani. It is enough for me to find now, as I do, that assuming that the 2nd Kumar was illiterate in the sense I stated in 1909, and allowing for the lapse that might occur in bare literacy, the mind of the plaintiff, so much of it as the defendants cared to reveal to me by their cross-examination, is not different from what would be the mind of the 2nd Kumar to-day. The rest of his mind they did not explore, and the only reason that I can think of is not fear of factitious knowledge, but of memory.

Literacy of the second Kumar.

The case of the plaintiff is that the 2nd Kumar was illiterate, except that he could write his name in English and Bengali. The plaintiff can not do more; and he does not know, as proved by cross-examination, the letters that compose his signatures, except the letter 'N'.

The case of the defendants, as put to Mr. Ghosal examined for the plaintiff on commission in 1933 is that the Kumar was an educated man? The case was thus put?

"You found him to be a well educated well-polished young Bengali aristocrat."

This case remained during the cross-examination of the plaintiff. The picture then presented was a Kumar well educated, knowing every variety of sports, familiar with English clothes, dining with and meeting Europeans, and able to speak English. Quite early with the case it was suggested to a witness for the plaintiff that the Rajah

wanted his sons to meet Europeans, and employed a Sahib to teach them (P. W. 35) meaning obviously Mr. Wharton the only English tutor appointed for the Kumars.

The plaintiff an illiterate Punjabi on the defence, was expected to play the role of the Kumar, and those who have set him up did not even teach him the alphabet, though they had 12 years to do so.

At the date of trial there was not a single line of writing of the 2nd Kumar, except the ~~nine disputed Bengali~~ letters ~~which had~~ been filed in a sealed cover, and which was not opened, until the cross-examination of the plaintiff was going on. Those letters are in Bengali, purport to have been written by the 2nd Kumar to his wife, with the exception of one which purports to have been written by him to his wife's sister, Prohabati Debi, who has been dead for 6 years. On eight of these letters occurs at the top the word "God" in English.

Except for this word God there was no English writing of the 2nd Kumar at the date of trial, and no Bengali writing except the disputed letters aforesaid, not counting certain signatures in English purporting to have been made by him, and a single Bengali signature, Ex, 2 which the plaintiff admitted as his own exhibit.

Directly the plaintiff declared his identity, almost directly I should say, Satya Babu took steps, as he says, to safeguard the evidence of death, and himself proceeded to Darjeeling with Rai Bahadur, Government pleader, to

Darjeeling. This was before the middle of May 1921. Rai Bahadur the Government pleader has since that time been acting for the 1st defendant in this matter. If there were any writing of the 2nd Kumar, it would be treasured up like gold, and it is unthinkable that the matter would be overlooked. In 1932 it was apparently decided to take the opinion of a handwriting expert, and the only materials sent to him were a lot of signatures of the 2nd Kumar and a lot of signatures of the plaintiff which had occurred on certain documents filed in a land registration case in 1929.. There was no other writing to send.

Nearly four months after the plaintiff's cross-examination, the defendants produced in court certain documents to shew that the 2nd Kumar could write more than his signature, and that he knew most of the things which the cross-examination shewed the plaintiff did not know. The documents were hit by the Ord. XIII Rule 2 of C. P. C.. and I gave full reasons for rejecting them. The documents were mostly vouchers of the kind that were used in cross-examination of the plaintiff, but while in the latter occurred only the initials of the 2nd Kumar under things written by somebody else, on these newly filed, some six of them occurred words like "sanctioned" or "approved" which, it was said, were not written by clerks but by the Kumar himself. Of the two arguments advanced then dealt with the one was that the defendants were entitled to first ascertain what the plaintiff does not know, and then produce docu-

ments to shew that the Kumar knew them. The second argument was that the absolute illiteracy of the plaintiff has placed the learned counsel in a difficulty. He was prepared to prove learning and this man reduced him to the difficulty of proving literacy. That was really no meaning, unless difficulty means regret that the literacy of the Kumar was needlessly pitched so high, looking to the plight of the plaintiff. It might well have been kept near the Kumar's true level, as it was at the end of his education and the plaintiff still distinguished by urging against any possibility of lapse.

Closely looked at, the accounts that have been given of the education of the three Kumars differ only in the result, and not the process; and when Mr. Chowdhuri was suggesting good education as the result, he was expecting an effect without cause. The plaintiff says that he was under two tutors. Dwarika Mukherjee and one Anukul, and all that he learned was the English and the Bengali alphabet and how to sign his name in both, and then with lapse of time he forgot the letters, and all that remained of his education was the ability to sign his name in English and Bengali.

The account given by Jyotirmoyee Debi is this; She and Indumayee her elder sister, were reading under a tutor before 1296 (the year she indicates by her age) when Dwarik Master came, and they and Bara Kumar who had learned the alphabet under the former tutor came under him. She was then 8 or 9 years old. Later, during the

period 1296 to 1300 (1899 to 1893), the 2nd and the 3rd Kumar came under the same tutor, and they went on reading with him, until 1300 when the 2nd and 3rd Kumar were sent to Collegiate School. The Bara Kumar had been sent to that school before. The 2nd and 3rd Kumars were at the Collegiate School for 20 or 25 days, and then came back, and they came under Dwarik Master again, and another tutor, Anukul Babu. She does not know what further progress they made, but the net result was that the Bara Kumar learnt something, and he would be seen reading an English newspaper, but the other two were very unmindful, and the 2nd Kumar was turbulent besides, and had learnt nothing, beyond *falabanan* or simple spellings in Bengali. Her account does not touch the period after 1300 but Billoo, the nephew of the Kumar, came under the same tutor in 1306. The 2nd and 3rd Kumars were still under the same tutor, and with them were reading, Lala alias Amulya, and one Bala.

He describes the pranks of the 2nd Kumar, and the reading room where each boy had a wooden-box for table, and where they would sit on the faras, box in front, and were supposed to read, while the tutor was attending to his correspondence with people to whom he sold a patent medicine for hysteria. The witness has no recollection as to the books the 2nd and 3rd Kumars read, but the English as well as Bengali books, and they would write such words as *ab*, *ad*, *at*, and so forth. During this period Bara Kumar

was not reading at all. The education of the Kumars, 2nd and 3rd came to an end with the Rajah's death, which is an admitted fact.

The account given on the side of the defendants is that of Phani Babu who as I said, was of the same age as the Chhoto Kumar. His account is: 1298 to 1300—The witness and the Chhoto Kumar commenced reading under Mr. Transberry, the Tea planter. They were then 5 years old.

Afternoon-reading in the Rajbari "School" under Dwaraka Master. He calls the children reading under Dwarika at the Rajbari a School. The 2nd Kumar had commenced reading under either from before, and he calls him more advanced .

1300—The Kumars go to Dacca. Jyotirmoyee Debi's education ends, as she says too.

1300 to 1303—The 2nd and 3rd Kumars come back and the witness resumes with them.

1303—The witness goes to Dacca to read.

1307—The Kumar's education ceases.

1309—The witness leaves school in the 3rd class, comes back, finds the Kumar as good as he in English, and the 3rd Kumar also as good in English, but a little less in Bengali.

He gives the progress of the 2nd and 3rd Kumars at the end of each stage: the 2nd Kumar could read English

and knew a little arithmetic, and *namta* in 1300. At the end of 1303, what book he was reading he cannot recollect, but says, the next day, Royal Reader No. 3, while he and the 3rd Kumar were reading Royal Reader No. 1; and he threw in a little Arithmetic, particularly *namta* (multiplication table). The plaintiff did not know what *namta* is beyond that children repeat it, and could not do a simple subtraction and said he could not count, although he was giving numbers at various places in his deposition.

This account differs from Jyotirmoyee Debi's and Billoo's in this that the result according to them was the knowledge of the alphabet, and simple spelling, and writing, while, according to Phani Babu, the attainments, of boy in the 3rd class of a High School. He had done with School at the end of that class, and found the 2nd and 3rd Kumar as good as he, the 3rd Kumar a little less than he in Bengali, and he threw in an ability to speak English then acquired.

This account is false. In the first place Phani Babu had said in a former deposition that he left school in the Entrance *i.e.*, the top most class. Secondly, this Mr. Transberry, a Tea-planter is being thrown into this period of education, as a substitute for the Saheb whom it was suggested the Rajah, anxious that his sons should meet Europeans, appointed to teach them. The Sahib, then in mind was obviously Mr. Wharton, but his resignation letter was proved and shewed that he was not appointed until after the Rajah's death, and that he had been appointed by

Rani Bilasmani. The Tea-garden in which Mr. Transberry used to work ceased and he left about 1296, according to Jyotirmoyee Debi, though he would come and pay visits and stay in the *baradalan*. The suggestion that he stayed on, and got a pay as tutor till Falgun 1300 was put to this lady, but it came to rest on the evidence of Phani Babu alone. That, if not Mr. Wharton, is going to be the evidence of the Rajah's anxiety for their sons English this alleged teaching of the alphabet at the age of seven. No body denies that the Tea-garden had ceased in about 1296 when the education of the 2nd Kumar had not begun.

Then this going to the Collegiate School in about 1300. The case put to Ganga Charan (P. W. 9) was that the 2nd Kumar was at this school for 2 years. That was given up, and Phani Babu was talking of less than, or about a year. Some of the students, then at school support the statement of the plaintiff that he was there for 10 or 15 days, he and the 3rd Kumar, in the lowest class, the 8th B and they would come in a phaeton, and there was a tent pitched for them for their tea, and they read nothing, but played the Rajah's sons who had come there as a matter of form (P. W. 792, Rajendra Kumar Roy, a gentleman of high position in Dacca; P. W. 997 Kamini Babu who was in the same class; P. W. 976 Amulya Sen, B.L. who does not practise, but is substantial though he made the mistake of thinking that Mr. Mohatab Ghosh was in the class 8th B they were in a higher class later). On this topic—the school there must

be many who could depose even if the register does not exist, there is no evidence that it does not, but none has been called by the defence.

The whole account is shaken not only by the false elements like Phani Babu finishing his school in the 3rd class, and Mr. Transberry, and the story that Phani Babu resumed his studies with the Kumars after they returned from Dacca, seeing that his family removed to the Nayabari in 1300 or not in 1303 Phani Babu admits so far that the *grihaprobesh* (entry) had taken place in 1300, but by other facts. Leaving aside Rajah's anxiety little evidence by employing a half educated tutor and later, a better teaching a lot of children whom Phani Babu calls school and into which he introduces outside boys, there is the improbability that two boys who were under tutors for nearly nine years should learn so little. But the result became as clear as daylight from certain letters which the defendant themselves produced. Now Chhoto Kumar could write Bengali, and Jyotirmoyee Debi says that, after the death of the Bara Kumar, when he became the *karta* he re-learnt reading and writing Bengali, and six letters were produced to shew that this was the fact (Ex. 38 to 43). The letters bear dates but not the years, and internal evidence shews that they were written after Bara Kumar's death. One of them, for instance, is referring to Panu who was born in 1318. In one of these letters he is stating with obvious pride that "I shall henceforth write with my own hand. I can speak

English a little, but am still deficient in writing. I shall try to learn English as you advised."

To show that he could write before, the defdts. put in two letters, one dated 1314 and the other not dated except for the date of the month (Z 145 and Z 146). The case that the Chhoto Kumar started learning reading and writing later, is not new, for as early as January 1934 a witness had stated, when the point was not in any body's mind, that the Chhoto Kumar was as illiterate as the 2nd Kumar, but latterly, he improved. Now leaving aside for the moment the question as to whether these letters are genuine, or the other set, the two letters produced by the defendants, which purport to have been written when Chohto Kumar was at least 21 shew, the net result of what they had learnt from the tutors. The writing is that of a child আমি is written as য়ামি আজ as য়ায and the like. It is writing I as Aye, and am as yam. It is the writing of somebody who has just learned to write, and has not read a printed book. This is not necessarily against forgery for in the case of the 3rd Kumar, there were letters, or writing out of custody, and even a forgery could not be pitched higher.

These letters are a good indication on the defendants' own case how much could be achieved by tutors after some 7 years teaching in the case of the 3rd Kumar. Now look at the evidence of people who knew the 2nd Kumar.

Rebati Babu, P. W. 62 was appointed a teacher, after he took his degree, in Jaidebpur school in 1899, and remained

there till a date in 1902. He says that he got instructions to teach the 2nd Kumar English orally, and without his knowing it, as he had a temper, and would send him about his business, if he knew. He says that he did not know a word of English, and that he had to try to teach him words like grass, yes, no, good, bad, and so forth, and he achieved no success. He was intelligent, but would not learn.

This testimony need not stand alone. It is confirmed by incontrovertible evidence, and by witnesses on either side. Bara Kumar, be it noted, had only smattering. Mr. Rankin says he could talk fluent English but even he, an Englishman, tolerant of bad grammar, said he was ungrammatical, and Mr. K. C. De, added E. B. accent. Mr. Stephen (P. W. 112) says that he would speak to him in English, but would lapse to Hindi, and that the other two Kumars always spoke to him in Hindi. Now look at the following.

(1) Mr. Wharton was appointed after the Rajah's death to teach the Kumars all the three colloquial English and was there for a year. In his resignation letter dated 25/7/02 which I quoted above, and which is full of disgust, he says: Ex. 4.

“Not only have your sons neglected their studies in every possible way, but have in no way attempted to reform their deplorably bad habits, and it is quite evident to me they have no intention whatever of taking my advice or accepting my tuition.”

The plaintiff had stated that Mr. Wharton taught him nothing, but supervised the stables. That appears from the resignation letters and certain chits in connection with such supervision (Ex. 16 series).

(2) In 1904 Mr. Meyer reporting to the Collector the affairs of the Estate with a view to action against the Rani. Bilasmani his employer says: (Ex. 284).

"As regards the two younger Kumars you yourself knew that it is impossible to do anything with them. They are constantly surrounded by low companions who simply cheat them, and get them to commit all kinds of follies." And a little above this:

"This two younger Kumars are helpless as far as business is concerned. They have had next to no education. The eldest Kumar is a very good-hearted lad, and as long as I am at his elbow I can make him see things in a proper light, he has business capacity."

It will be noted that he is distinguishing the two younger Kumars from the Bara Kumar, himself only barely literate, and had a smattering of English. Little or no education therefore means exactly what it says.

(3) On 26-4-05 Rai Bahadur Kali Prossono Ghosh, the old Manager of the Estate who knew the three Kumars from their very birth and who was at Jaidebpur throughout their education, says in a letter to Bara Kumar complaining that he had not seen him, though he had come to Dacca.

mentioning a book of his just published, and proposing to dedicate it to him, and asking for a clerk who could help him to produce further books. In this letter he adds: could you not arrange to see that a little English might emerge from the tongue of the two Srimans? It is no use if your dependants and companions and attendants call you Moharajah. It is the respect from strangers that counts (Ex. 472).

It is said that to so learned a man a little was nothing but that advice was not given to Bara Kumar, himself little more than illiterate.

(4) Mr. Lahiri, a witness for the plaintiff (P. W. 945), is 52. He is an advocate of the High Court, and a gentleman of high position. He is a son-in-law of the Moharajah of Natore, and a Citizen of Calcutta. He does not know the family, except that once in 1902 he was staying at the Susang House at Dacca, and attended an evening party at the Dacca House of Bowal Raj, and was introduced to the Bara Kumar at that function. The two younger Kumars were not in the party, and he heard something about where the 2nd Kumar was. He went to the party with Mr. Sures Chandra Singh of the susang family, and it will be recollected that his name was put to the plaintiff in cross-examination and the plaintiff remembered it. Mr. Lahiri says that in December 1908 or January 1909 the 2nd Kumar, accompanied by Digen Banerjee, paid a call at his house in Landsdowne Road.

Admittedly both were in Calcutta then, Digen Banerjee being a clerk (*vide* Saubhagya D. W. 87 who saw Digen during his trip to Calcutta)" Mr. Lahiri says that both came in a tom-tom, and Digen Banerjee, his class friend, introduced the Kumar. The 2nd Kumar was in a *lungi*, and they had some conversation in *Bangal* dialect (E. B. dialect) and he asked him to call at his *basha*. The witness inquired where the *basha* was, and was told in "Walish I Street." Digen explained he meant Wellesley Street, and the witness remembered it, as had never heard any body pronounce Wellesly Street as Walish Street. The witness had not, but I have in this case Alek D. Costa, for the defendants (D. 43) was speaking about this house is Wellesley Street where the Kumars stay during the Calcutta visit of 1908-09, and called the Street "Walish I Street". He is an illiterate cook.

Mr. Lahiri was severely cross-examined, there is nothing going to his credit and the 2nd Rani said that whoever said her husband could not pronounce 'Wellesley Street' is a liar. Look at her own witness Mr. R. C. Sen, Bar-at-law (D.W. 433). This witness came to prove that the 2nd Kumar was at the Victory's cup race in 1905, and that he could speak English. The witness is not above falsehood. Seeing that he admits that for the purpose of a suit he swore an affidavit in support of a fact, and for the purpose of another suit he swore a contrary affidavit, though not, as he says, without protest; and a portion of his evidence is wiped out by a document which I shall mention

presently. Now this gentleman says that in 1905 he met the 2nd Kumar in November or December, or rather the first week of December, and again on the Viceroy's Cup day (which takes place on the 26th December unless it is a Sunday). He fixes the year with certainty; it was the season in which H. R. H. the Prince of Wales came. He arrived on the 2nd January, and the 2nd and 3rd January 1906 were declared public holidays on that account. Now on this race-day, the witness met the 2nd Kumar at the race-course. So he says, and introduced the Kumar to Mr. Lesley of W. Lesley and Co. and they had some conversation in English over the old tea-garden at Jaidebpur—the garden that had ceased more than 15 years before, but a topic had to be found. The witness says that the Kumar spoke to Mr. Lesley in "Broken English." As an illustration the witness says: the Kumar said "Tea garden gan." (Tea garden gone). The witness says Mr. Lesley had difficulty in following the "goden" and I had to interpret sometimes. Now "tea goden gan" is not the English of a Bengalee nor of a *Bangal*; but of a man who does not know English at all. "Walish I Street" was better, though equally conclusive.

Now there was an idea in getting through this witness a little more of English and something of knife and forks, and the witness began to speak of lunches at Peliti's at which the Kumar was present and ate his lunch "with knife and fork." The lunch he says given by Mr. J. N. Roy, Bar-at-

law. Asked whether people of that sort-the Kumar's sort would go to Peliti's, he answers :

'It depends. I have known Rajahs who do not talk a word of English, and did not know how to behave, come, to Peliti's.....Ordinarily a man who pronounced.' 'Tea goden gan' would be out of place, but on this occasion it was not so, because the lunch was given by Mr. Ray to thank him for the present of brougham with a pair of brown ponies with bicycle wheels. The 2nd Kumar talked to Mr. Giridharilal in Hindi (he was a guest at the lunch).'' There was no titter as we had met him before."

The witness did not hear him talk English except on the race-day "the tea goden gan" sort. The reason why Mr. J. N. Roy was put down pompously as a friend in the life-insurance proposal form came out; but the lunches which the defendants are very fond of introducing as evidence of English, though Rajah's and not merely Rajah's sons might eat them without knowing English were cut out by document. The witness is quite clear that the lunches were before the race-day which was the 26th December 1905. Now on the 25th December the 2nd Kumar was at Jaidebpur and signed a letter as Secretary of the Dispensary Committee.

From Kumar Ramendra Narayan Roy Bahadur,
Secretary, Charitable Dispensary of Jaidebpur,
To

The Civil Surgeon, Dacca.

Dated 25th December, 1905.

Dear Sir,

I beg to draw your attention to your letter dated the 2nd instant and former correspondence and request you to kindly take an early step in the matter and oblige.

Sd/- Ramendra N. Roy,

Your sincerely,

Secretary.

apparently the clerk did not point out the place for signature. The signature on this letter has been proved by Rai Saheb himself. Taken alone, it might conceivably be an accident, though the Kumar never drank. It merely confirms the conclusion to which hard facts breaking through a mass of lies have been leading.

Now test the direct evidence, though it is useless to do so. Numerous witnesses on the side of the plaintiff have deposed that the 2nd Kumar could not read and write except that he could write his name. I need only mention some of them. I have already mentioned Rebati Babu (P. W. 62) now a pleader of standing at Dacca. I have mentioned Mr. Stephen who said that the two younger Kumars spoke to him in Hindi. Manindra Bose (P. W.

155) now a lecturer at the University, but formerly an Assistant Head master at Jaidebpur, says that the 2nd Kumar did not know English, and he collected that from his conversation with him he would not understand English words which one mixes in ordinary Bengali. Jogesh Roy, B.A. formerly headmaster at Jaidebpur, says that he never heard the 2nd and 3rd Kumar talk English. Mr. N. K. Nag, the barrister, never heard the 2nd Kumar utter a word of English, though he mixed rather intimately with him in youth. Mr. P. C. Gupta, Engineer, never heard him use such expression as How do you do? Old officers saw him sign papers put up before him, and that, not very frequently. Mr. G. C. Sen (P. W. 89) the life-insurance agent attacked as a false witness who was not the agent at all, until the insurance doctor's report, supposed to have been out of reach in Scotland, arrived swore that he had to interpret every question that Dr. Caddy put, that he merely signed where he was told to, that he was not the man who cared to understand the terms of the policy, and that his idea was that he was absolutely illiterate, except that he could sign with difficulty.

Babu Sanyasi Charan Roy a pleader of thirty years' standing a former Chairman of the Sudder Local Board, a former member of the District Board, and a man of property saw the three Kumars one day at the house of Mr. Tucker S. P. in 1897 or 1898. The 2nd Kumar was then about 14. The boys were taken to Mr. Tucker by Rai

Bahadur K. P. Ghosh Manager. "Mr. Tucker asked the boys some questions in English. They did not reply, but smiled. Then Mr. Tucker spoke Bengali, and the Kumars answered in Bengali. Whether each spoke I cannot say, but I am positive the Bara Kumar did so."

The Kumars' education ceased in 1900. It is not suggested by any body much less said, that after that he read a single book or that he owned or possessed a single book.

In 1906, after the Pujahs, Mr. Stapleton, Inspector of schools, visited the Rani Bilasmani High School at Jaidebpur. The time is given by a teacher then as now employed in the school (D. W. 14). Mr. Joges Roy, a pleader, of Issargange (P. W. 909) was then at this school as a student. He says that on this occasion the 2nd Kumar, dressed in a Chapkan and Pyjama, and the Secretary, Rai Saheb, went to the station to see Mr. Stapleton off, and the boys, too proceeded to the station to see the Saheb as the school closed in honour of the visit. He says that Mr. Stapleton and the 2nd Kumar and Rai Saheb sat in the waiting room waiting for the train, and the Secretary was speaking to Saheb. As the Secretary went out of the room, the Saheb put questions to the 2nd Kumar in English. The 2nd Kumar sat quiet and said nothing. The Secretary came in and explained to the Saheb that he did not know English, and Mr. Stapleton smiled, and said: "I shall speak to him in Bengali."

Rai Saheb admits nearly the whole of the incident except that he said the Kumar did know English.

It is needless to deal with all the witnesses on the point. The conclusion need not rest upon any particular witness's credibility. The burden of proof on this point is on the defendants, but the negative has been proved. There is the letter of Mr. Wharton. There is the report of Mr. Meyer. There is the letter of Rai Bahadur K. P. Ghosh. There is the Dispensary letter. There is the defendants' own witness dragging the English to "Tea goden gan". There is the "Walish I Street" which I fully believe the 2nd Kumar uttered.' It is not without reason that Rai Bahadur S. P. Ghosh for the defendants who was at Jaidebpur, and was practically brought up with the Kumars, was not asked a single question on education by the defendants. In cross-examination he says: "In his father's life-time the three brothers did a little reading and writing together. Afterwards, some time after the father's death, he grew very wild. How can I say what he did. His sexual character became very bad after his father death."

And yet the 2nd Rani, and a number of witnesses including Chhoto Rani, Phani Babu, Birendra (P. W. 290) Rai Saheb (D. W. 310) Satya Babu (D. W. 380) have come to say that the Kumar could speak English and Satya Babu adds that he would call him an educated man. He could not say less. The instructions given to learned counsel were that he was a "well-educated and well polished

man." The conclusion can not be repelled by the uncertain memories of Mr. K. C. De at a Railway station, and at a garden party where he met the three brothers together for a few minutes; nor by the statements of Lt. Hossain who, to save the billiards, put the Chhoto Kumar at the Park Street house in 1904, and talks of dinners which all vanish in cross-examination, and whose content with the 2nd Kumar at Dacca can be saved by a gap in his college career of which he is ignorant. Mr. Rankin's evidence as I read it, lands one exactly at "Tea goden gan". He ceased to be the Collector of Dacca on the 2nd August 1905, and was deposing 29 years after that date of 26 years after 1909. As Collector, the three Kumars would pay formal calls to him to pay him respects. They would generally come together, as a rule, not always; he says and when the two younger Kumars came, some body would come with them, possibly to help with English. He remembers that Bara Kumar spoke English, fluent but ungrammatical, and he has no recollection of any specific occasion on which the 2nd Kumar saw him alone, there is the other man there to help, and how much of his memory is more than impression it is difficult to say; but looking to the man who came to help, to the fact he deposes to that his pronunciation was worse than that of an educated Bengali, that the 2nd Kumar will answer questions put, while Bara Kumar talked, I believe that the 2nd Kumar's English did not go beyond the 'Tea goden gan,' and 'Walish I Street' "type.

as it appears from the facts I stated. I notice permissions to see the Lieutenant Governor were always issued to the eldest Kumar and they asked him to come "with your brothers" (Ex. 285 to 285 (4)). I notice also that Mr. Allen who succeeded Mr. Rankin as collector was asking the Bara Kumar to come "with your brothers." After 1909 he was so asked to come "with your brothers." After the Bara Kumar's death, I expect the Chhoto Kumar would go out always with some body. Birendra, the 2nd Kumar's personal clerk and still in service (D. W. 290) says that he does not remember having seen 2nd Kumar visiting Sahebs alone. Saw Chhoto Kumar after Bara Kumar's death going alone, or with somebody. This somebody was Jogendra Babu, he says, Jogendra Babu of course denies it.

It is perfectly clear that the 2nd Kumar did not know English at all, except such words as people, ignorant of English, pick up. Such words the plaintiff himself used in the course of his deposition, and looking to the English the 2nd Kumar spoke, if English it could be called, he would be to-day in the same plight as the plaintiff particularly if for 12 years out of the 24 years that elapsed since 1909 he was in the company of sanyasis, away from Dacca, and its local associations. A more elaborate scheme to displace him by a false trait it would be difficult to conceive but every part of it has been destroyed by facts. The Kumar, a villager, was to be a Saheb. The Rajah was to

be a father anxious to train him in European style, and Mr. Wharton was to be the tutor, and to finish off his English. Mr. Wharton goes off, and Mr. Transberry was put into the educational period, but had to be laid at the beginning, at the alphabet, as he had left long ago. And directly it appeared that the English was not going to be fruit of the tutors' efforts, the style came in. Dinners at Baradalan went off. The dinner with Lord Kitchener was displaced. The dining room in the "godown" of the Kumar was the next thing tried, but it did not exist. The English clothes, English meals—the lunches, in hotels, the contact with Sahebs, the vocabulary of an English sportsman were put into the scheme, and lastly came the party before Satya Babu in a criminal case (D. W. 87) to bring in an Anglo-Indian girl in whose company the Kumar comes to the shop of the Jeweller, and speaks to the Manager in English and buys for her Jewellery worth Rs. 7,000 while the Kumar was in Calcutta for treatment of his filthy sores. I find the 2nd Kumar did not know English at all, and what little of English he knew was not more than any ignorant man may pick up, and that the plaintiff is to-day exactly what I would expect him to be so far as English is concerned.

I need not refer to Lt.-Col. Pulley. I pointed out above how his account about meeting the Kumar before the Lord Kitchener's shoot, in connection with the arrangements for the shoot has been wiped out by the Gazette.

and the fact he admits that he did not see the Kumars at all before the 22nd February 1909 and then only the Bara Kumar; and I pointed out he had been persuaded to believe things that had not occurred in his knowledge, as he had to admit, including the English accent of the 2nd Kumar which he admitted was not the fact. Mr. Meyer and Mrs. Meyer, I need hardly refer to Mrs. Meyer, saw Mr. Wharton at Jaidebpur in her time, though he had left before, and Mr. Meyer is displaced by his former report, by his former testimony in court, and by Mr. Rankin.

After the plaintiff had closed, the defendants called for from the High Court a promissory note dated the 1st April 1905 executed by the 2nd Kumar for a loan of Rs. 10,000. Underneath his signature occur the words ten thousand, and it looks as though it had been written by him. Of this loan Mr. G. C. Sen, then attacked as a false witness, who was not the agent for the life-assurance at all, spoke. He purports to have attested it, and also Sris Chandra Roy, a clerk in the service of the estate. This note led to a consent decree in 1909. Mr. Sen was asked nothing on the point. Sris Roy has not been called. And the three witnesses, Rai Saheb, Fani Babu and Satya Babu say that the words "ten thousand" are in 2nd Kumar's handwriting; and Mr. Hardless, a handwriting expert has given an opinion in its favour, as he has on every point needed by the defendants. I would find nothing upon the testimony of these witnesses seeing that the promissory note

mentioned as early as 5/2/34 by Mr. Sen but not called for until a year after, although the expert examined by the plaintiff came and went twice, and could not be called again, after he had closed ; and although it is obvious that Mr. Sen was present at its execution as he had deposed, he was left with the impression to which he has deposed that the Kumar was illiterate in the course of the transactions that led to the note and the insurance. Assuming, however, from the look of the thing that the Kumar wrote the two words 'Ten Thousand,' as judging by the look alone he apparently did, there is no knowing that somebody did not tell him the spelling and it does not in any case prove ability to talk English. That only leaves the point which remains in any case, whether he could forget the letters, for it is obvious and it is admitted, that he knew them, and he must have done English writing while under the tutors, or he could not sign his name. That point I shall consider under the topic "handwriting".

I shall just allude to one other point which is that the plaintiff said while under cross-examination that he could not count, and could not count, or said could not count, even from 1 to 10 or 10 to 20; 60 to 70. He could not also state the difference between two small sums. I do not believe that he cannot count, even though he be an impostor he was mentioning bulks of various things, in terms of number, such as so many elephants, so many horses and so forth, and the contention that the 2nd Kumar

could not count, so far as may be necessary for ordinary purposes, or that he could not understand the hours of the day, has not been advanced. Jyotirmoyee Debi says that he did know how to count up to a point. Understood sums like Rs. 10, Rs. 20, Rs. 30 and so forth, and I do not think that the plaintiff can not do that, as the most illiterate people understand bulks, and quantities, and use words i.e. numbers to indicate them, though consecutive counting beyond a point may be beyond them. There was therefore no point in asking the witnesses whether the 2nd Kumar knew the difference between Rs. 10 and Rs. 20, or whether he would understand the difference between 10 men and 20 men or whether supposing he wanted to pay Rs. 20, and paid Rs. 10, he would know the difference. I see also nothing in the inquiry as to whether he could count the score at cards. Nobody can say about any other man the quantum of whose literacy is not known whether he can count. It is possible to say that a man can not reach the age of fifty, be he a peasant or a Rajah, without using numbers. The 2nd Kumar used to have a clerk about him to keep his accounts, and I do not think he had to do any subtracting. It is interesting to observe that Mr. Haladhar Ray, a millionaire, who deposed in this case could not subtract 1313 from 1340.

Turning now to Bengali writing, the plaintiff can write the name Ramendra Narain Roy in Bengali, but can not say which part is which correctly, except the letter

‘ম’ (ma). He knows also that ম is a compound letter, but calls it দইন্তু (daenta). In short he does not know the letters. The whole signature in Bengali or English has to him, become a mark. Under handwriting I will have to consider whether this is the remnant of what literacy he acquired in childhood, or whether this is forgery by later acquisition, for there is no doubt that the signatures resemble the signatures of the Kumar, and the resemblance is the kind you find in deteriorations.

Of the 2nd Kumar's Bengali handwriting nothing has been produced except a single signature in a letter (Ex. 2), signed by the three brothers, and addressed to their mother, and the disputed letters, nine in number, purporting to have been written to his wife, with one exception. The exception purports to have been written to her sister, Probhabati Debi. The signature Ex. 2 is admittedly genuine; and that is the sole standard for comparison with the letters just mentioned. The plaintiff denies that he wrote those letters, and the witnesses who have spoken to his literacy—Jyotirmoyee Debi and Billoo, and those who knew him intimately say that such letters, or even any Bengali writing, was beyond him in later years. It is perfectly obvious that the 2nd Kumar wrote little of Bengali, not even Bengali signatures except rarely or the defence would not be limited to a single signature, save and except the disputed letters. No estate papers bear his Bengali signature. No witness even on the side of the plaintiff saw him

write Bengali except Jatin (P. W. 9) one of his *moshahebs*, who says that he once got him to write a letter to his aunt, and signed it in Bengali. Nobody on the side of the defendants saw the 2nd Kumar write Bengali except so far as this may be involved in the evidence of the witnesses who depose to these disputed letters as the hand-writing of the 2nd Kumar. These are Phani Babu, Rai Saheb (D. 310), Chhoto Rani and Birendra D. 290). I do not believe that they ever saw the 2nd Kumar write Bengali. They do not say so, though they identify the hand-writing, except Chhoto Rani who says she saw letters written to the 2nd Rani by the 2nd Kumar. As to this lady, she would not speak to the handwriting of any letter put to her until she read, re-read and thought about the whole thing, and I do not believe that she had seen any handwriting of the 2nd Kumar at all. The disputed letters must therefore rest on the testimony of the 2nd Rani alone, and the question is whether these are forged to defeat the plaintiff, or being genuine they defeat him.

The letters and their contents may shortly be indicated.

The Kumars as I said would frequently come to Dacca for short visits, and stay at their own house. During their stay here peons would come from Jaidebpur to Dacca, and it is said that the letters, most of them, were written from Dacca to Jaidebpur, and sent by messengers. The letters with the dates they bear and brief account—their contents may be given thus:—

(1) 25th Sraban 1309—X(9) Z(142) (1)

Lat Saheb will come to-morrow at 12, and pass the night at the Commissioner's house. I saw the Commissioner this afternoon. I shall tell you when I go home—what conversation I had with him.

(2) 30th Baisak 1311—X(7) Z(143).

To Probha, the sister-in-law, younger sister to the 2nd Rani.

Among other things it says:

'Not having received any letter from you so long I thought you were offended with me. Hope you will constantly write to me. The letter indicates that there had been previous correspondence between these two.

(3) 9th Sravan, 1312, Wednesday—X (8) Z (142).

From Dacca to Jaidebpur, according to the 2nd Rani says among other things: Met Ashwini Babu. He will see the Magistrate, and we will do what he says. Have not ascertained whether the Lat Saheb will or will not come.

(4) 12th Bhadra 1312 (28|8|05).

From Dacca to Jaidebpur, according to the 2nd Rani says among other things: Missil could not come out because of rain. Will see the new Magistrate in the morning.

(5) 19th Pous, 1312—Ex. Z (142) (3).

From Dacca to Jaidebpur, according to the 2nd Rani.

Says among other things: It will be four or five days before I can return home for the Lat Saheb has not yet reached Dacca. He will arrive day after to-morrow.

(6) 11th Sraban 1313—

From Dacca to Jaidebpur, according to the 2nd Rani.

Says among things: seen Magistrate to-day. Will see Savage Saheb and Rankin Saheb to-morrow and after seeing them, will see Lat Saheb at 5.

(7) 12th Sraban 1313.

Says among other things: Seen Lat Saheb. Will see Rankin Saheb to-morrow.

(8) 19th Pous 1313.

From Jaidebpur to Calcutta, according to 2nd Rani.

The 2nd Rani was then in Calcutta in the house of Dharmatola Street (vide narrative above).

Says among other things: So long as you are there write every day to me. 24th fixed for our departure. Mother going with me.

(9) 16th Baisak 1315.

From Jaidebpur to Uttarpara, according to the Rani who had gone there on account of the marriage of Satya Babu.

The letter says among other things:

I have written four or five letters in succession but no answer. Will start on the 20th.

The letters were filed on 19|1|32 in court in a sealed cover, and put to the plaintiff during his cross-examination. He denied them of course, and he certainly is incapable of them.

I have looked at the letters carefully, and considered the opinions of the experts on the handwriting. I shall deal with that opinion presently. The letters are extremely matter-of fact,, though they purport to have been written by a man between the age of 18 and 24. I am not referring to the letter to the sister-in-law which is not devoid of some sentiment but sounds artificial.

The 2nd Kumar had started keeping a mistress before his marriage, and his morals were throughout bad, but I see nothing in the remark that such a man was not likely to write to wife during his short visits to Dacca. I would expect such a man to be even caressing in his letters though I must say that the 2nd Kumar made no secret of his ways.

The thing that strikes me as odd is that almost every letter should mention visits, or intended visits to the officials, and that cited the comment that whoever composed the letters was a man to whom such visits were an unusual honour. Look at the first letter for instance to a wife, 13 years old, married three months who came of a poor family, and knew nothing about commissioners and the husband, a boy, was going to tell her what the commissioner had said. One thinks of the case, now exploded, that the 2nd Kumar was an educated aristocrat mixing with Sahebs and the possibility of these letters being composed with an eye to that case; but that is hardly a sure ground for a conclusion. The thing that strikes me as odd

is that the Kumar was frequently coming to the Dacca house, an hour's journey from home, and if such correspondence was usual, only such letters as mentioned the officials got preserved. The Rani said of course that there are other letters not fit for production in court as they are silly, but it is still odd that those not silly are mostly on this topic.

Another thing that is odd is that these letters though spread over six years shew less variety in topic or writing than one would expect; and I see very little of a boy or youth writing to his wife. It is an amazing fact in this case that although there is no end of evidence about the 2nd Kumar, there is little about anything he had said there are one or two sentences illustrating the kind of language he spoke, but nothing from which one could judge the authorship of these letters by looking to the things said in them. But if one remembers his education-up to simple spellings in Bengali, and its complete end in 1307, one would consider these letters, taking even the earliest as beyond him. Just as these letters would most assuredly be beyond the 3rd Kumar whose letter, disputed but said to have been written according to the defendants, and at the age of 24 was that of a child. These two brothers had the same amount of education practically speaking, and that is why Phani Babu (D. W. 92) the witness for all exigencies, was made to say that he found the two younger Kumars after their education came to an end equally good

in English, but the 3rd Kumar a little less in Bengali. If the Chhoto Kumar's letters become the measure of the 2nd Kumar's writing capacity, he could not have written the letters under discussion at all, and the evidence on the side of the plaintiff is that Chhoto Kumar re-learnt writing after the Bara Kumar's death.

I am satisfied that the letters are not genuine on these grounds:

(1) It seems to me that visits, of or to Lat Sahebs, were intended to be steel-frame upon which the fabric rest, as these could be, and would be checked; but as it happens in such efforts, the frame has broken down in two cases, the letter dated the 25th Sraban 1309 says: —

“The Lat Saheb will come to-morrow at 12 o'clock”. 25th Sraban 1309 corresponds with 10|8|02. It turns out that Sir John Woodburn was presiding over the legislative council on the 11|8|02 and there after proceeded to Behar on tour (Cal. Gazette, dated 20|8|02).

Now look at the letter dated the 19th Pous 1312 which is 3|1|06. It says that the Lat Sahib will arrive day after to-morrow and the Kumar waits for 4 or 5 days before he could go home.

Now look at these dates.

26th December 1905—The 2nd Kumar in Calcutta on Viceroy's cup day, according to Mr. R. C. Sen for the defendants.

2nd January 1906—H. R. H. the Prince of Wales arrives at Calcutta.

It is agreed on all hands that the three Kumars had gone to Calcutta and were staying at 19, Lansdown Road, and the defendants examined a witness who says that he decorated the house on the occasion. The 2nd Kumar was certainly in Calcutta till the 4th January 1906, as on that day he was writing to the Manager for sending him Rs. 30, and the letter is dated 4|1|06 and is from 19, Lansdowne Road, and the Manager sends him the money with a note of that date (Ex. 470 and Ex. 470 (a)). The Kumar was not therefore at Dacca on the 3rd January, much less write on that date from Dacca, as he purports to do, and the point looked so serious, that I heard the learned advocate for the defendants on the point. He says that the Lt.-Governor visited Dacca on the 16th January so that if I take the 19th Pous as a mistake for the 29th the letter fits, i.e. if I take the 3rd as reading the 13th. Nobody can exclude possibilities; but even that does not fit. On the 13th one would not call the 16th "day after to-morrow". It was the first visit Sir Bamfylde Fuller to Dacca, the capital of a new Province, and the date must have been announced.

(2) Now look at the style. The letters to the wife are prosaic, but the one to the sister-in-law contains passages which are bookish and high-flown. If there is any fact as to which there can no doubt whatever it is

that the 2nd Kumar was innocent of books. It was therefore thought necessary to explain such style in this letter and Phani Babu was there to give an explanation. He says that the 2nd Kumar cultivated dramas, would judge plays staged at Jaidebpur, and the witness thinks that he read the love letters—in the plays, and he gave, as an instance, “passage in the play, “Dismiss”. Asked whether this play was not staged at Jaidebpur after Bara Kumar’s death under the name “Necklace” he says that that was a different play. The printed programmes of the play “Necklace” were shewn to him and he admitted them (Ex. 334 to 334 (3)). I looked into them. It is the same play as the “Dismiss”.

Now this letter of the sister-in-law indicates, and the Rani also deposes, that she and the 2nd Kumar had been corresponding, and this correspondence was going on till about one year after her marriage which took place in Magh 1311. The 2nd Rani says that she got this letter from her husband in October or November 1933. November before last she says, but this is wrong, as it had been filed before. The sister has been dead for six years. It is odd that there is no other letter, or that her husband or any body else in the house does not come to say that this letter was there or that such correspondence had taken place, or how this single letter written before marriage got preserved.

(3) Two handwriting experts have given their opinion-

on these letters, and the Ex. 2, the admitted signature, of the 2nd Kumar, and some Bengali signatures of the plaintiff. The opinion of Mr. S. C. Chaudhuri is that the writer of the Ex 2, if that be his normal signature, could not possibly be the writer of the letters; and that the Ex. 2 and the plaintiff's signatures are by the same hand. Mr. Hardless for the defendants is of an exactly contrary opinion. Considering the reasons of those opinions I discuss the matter below: Mr. Chaudhuri's opinion is correct. It will appear that the two experts really agree in their premises which can lead to one conclusion but Mr. Hardless will not draw it. He could not deny the visible data, and the principles, though he kept changing the latter to avoid the conclusion, though the principles are self-evident.

I conclude that the disputed letters under discussion are not genuine, that they had not been written by the 2nd Kumar. These going off, there is complete want of evidence, practically speaking, that the 2nd Kumar ever wrote anything in Bengali, except his signature, and even that so rarely that few had seen him do it. The point that remains is whether what literacy he acquired under his tutors could lapse to complete illiteracy except for the ability to write the names without even the knowledge of the letters that compose them. That leads to the next topic.

Handwriting of the plaintiff and that of the 2nd Kumar.

The plaintiff's earliest signatures, to mention those

produced in court, occur in two vakalatnamas and certain petitions filed in 1929 in a land-registration case (Ex. P. series). The next in date are the 19 signatures on his memorial to the Board of Revenue presented on 8|12|26. The next in date are certain signatures he filed in court in December, 1933—these may be referred to as the specimens filed in court. And the latest were those he wrote in open court during his cross-examination. These may be referred to as specimens writing in court. All these signatures are in English. There is no question and the experts agree that all these lots of signatures are by the same hand—that of the plaintiff.

Of Bengali signatures there are two written at Court (Ex. 10 (5) (1) and Z(162) (1) in December 1933 during his cross-examination, besides the word Ramendra alone on the same paper as Z(162) (1); and three signatures filed in court (Ex. 3 (1) to 3 (5)—among these). There is also no question that these signatures were all written by him.

On 8-2-32 is nearly two years before the trial began, and more than five years after the 19 signatures of the plaintiff went to the Board of Revenue with the memorial, the Government pleader, Rai Bahadur Sasanka Kumar Ghosh, acting for the contesting defendants decided to take the opinion of an expert on the handwriting. He sent his requisition to the Commissioner of Police of Calcutta with a request that the opinion of Mr. S. C. Chaudhury should

be obtained, and he enclosed the specimens and a note.

These were made over to Mr. S. C. Chaudhury. The requisition was in these terms:

Group A.

Hundis executed by the late Kumar Ramendra Narayan Roy and his brothers.

7 Hundis and one handnote.

Group B.

Signatures of the impostor as Ramendra Narayan Roy.

1. Four vakalatnamas with signatures of the impostor as Ramendra N. Roy filed in Land Registration cases at Dacca in the year 1929.

2. Three typed petitions containing eight pages in Land Registration Appeals No. 50 and 51 of 1929-30 filed before the Collector of Dacca, and bearing the signature of the impostor as Ramendra Narayan Roy.

3. Two petitions in Bengali in Land Registration cases No. 2718 and 2719 of 1929-30 before the Land Registration Deputy Collector, and signed by the impostor as Ramendra N. Roy, six pages.

N. B. Signatures in Group A of Kumar Ramendra N. Roy under lined with a Red pencil are to be compared with those of the impostor in Group B also similarly underlined. Five signatures from each group which are most dissimilar may be selected for comparison, and opinion with reason may kindly be recorded. Prints, enlargements, as

well as the negatives, are to be returned along with the opinion and the documents.

Then follows a note asking that the expert should send the opinion to Mr. S. C. Ghosh at 19, Landsdowne Road, or delivered to Mr. S. N. Banerjee of the same address (i.e. to Satya Babu). This note also reiterates that "five signatures from each group which are most dissimilar may be selected."

Rai Bahadur, when he was composing this letter, must have been trembling. He made no secret of what he wanted, and he sent the requisition through the commissioner of Police. Mr. S. C. Chaudhuri was formerly an Inspector of Police, and his work was handwriting comparison for police cases, and though at the date in question he was as new, in private practice, he still gets police work.

Now Mr. S. C. Chaudhuri sat down, and compared the two sets of signatures put down a string of differences as many as he could but ended by saying that it seemed more probable that the writer of the set A was the writer of the set B, and the differences caused by infirmity, old age, or disease. He saw in both lots certain common characteristics not in form and thought that the imitator could not reproduce them, and add that marks of infirmity or old age.

An expert who, upon the kind of requisition aforesaid, could give this opinion, has acquired something of the

neutrality of science. The opinion was of course suppressed from the Hon'ble Board of Revenue. Satya Babu says that it was not sent, as it was inconclusive.

Mr. S. C. Chaudhury was called by the plaintiff, and his evidence will be just considered. Before he was called he had received two other requisitions. On the 4th January Mr. Pankaj Ghosh for the defendants placed before him six of the disputed Bengali letters, the Ex. 2 and the Bengali signatures of the plaintiff I mentioned, and asked for his opinion. His opinion, as delivered to him was, that the writer of Ex. 2, if that was his normal signature, could not have written the letters and the signatures of the plaintiff (he was not told they were the plaintiff's) might be by the same hand.

On the 9th January or thereabouts Mr. Mukerjee for the defendants went to him for an opinion on two sets of English signatures, those of the Kumar and the plaintiff and on the Bengali writing. Mr. Chaudhury declined to give an opinion on the Bengali lots, as he had already given one, but on the English lots which included new materials he gave his opinion that they are by the same hand.

To appreciate his evidence it is necessary to mention certain simple proposition which are self-evident. An imitator achieves the form, or something of it, but as each person has a writing habit of his own, he leaves in the imitation without his knowing it, marks of his habit not present in the genuine thing. There are called basic characteristics. Where there are long documents, disputed or standard, even the habit of punctuation or a non-variable letter, say, may be basic in this sense, but the thing that goes to the root is the movement supposing the two writings disclose a difference of movement. Now movement means this; you write with your hand. Now, your fingers may write, or it may be your fingers do not move at all,

but the hand, fingers, fixed upon the pen, and the wrist held down to paper; or it may be your elbow is the pivot, in which case you write not with the wrist moving, but with the forearm. You may write even with shoulder as the pivot: which few do, except those writing on a board, or huge letters on a poster. If you write with the fingers, you write each letter separately with the moving fingers, and that means the writing is slow, curves bad, strokes unjoined, and not clear out. And there is no swing of the pen, as you left the pen at each letter, or even part of a letter. This writing is the earliest stage, and is mentioned only to shew the contrast with the wrist writing. If you write with the wrist as pivot you get a swing, but the scope is limited, your pen can go to the right as far as the wrist can move; and one characteristic of this writing is that it tends to ascend like this:

If however you do not stop, but go on till your wrist strained takes you, the writing becomes an arch, and the angles more or slanting towards the right.

A wrist-writer however prevents this by shifting his pivot but as the line tends to rise, such shifting, unless constant, leads to this sort of alignment:

If you write with the forearm however the scope of your pen is longer, and the arching will not take place unless you come to the end of the swing of the forearm, and this, it is agreed, does not happen within the width of a foolscap paper which is well within the scope of a forearm.

Coming now to the evidence of Mr. S. C. Chaudhury he said that the Ex. 2 (the Kumar's signature) is that of a wrist writer, while the disputed letters were the writing of a forearm writer: Evidence: Ex. 2 has a tilted up alignment; while the lines in the disputed letters are straight,

though they run the whole width of the paper, they are parallel, they shew speed, their line-quality good, modulation of pressure regular and there is shading with fine tapering points, altogether a superior sort of writing.

He was cross-examined by Mr. Mukherjee of the Alipur Bar who knows the technique, and who had discussed the matter with Mr. Chaudhury before coming to do so, without telling him that he was coming to cross-examine him. It was he who elicited by leading question the marks of the finger, wrist, and forearm writing, and having done so, put the case that the Ex. 2 is wrist-writing indeed, but the disputed letters are wrist too, while the plaintiff's signatures are finger-writing. He elicited that the Ex. 2 displayed better and more graceful curves and shewed greater scope than finger, greater, compared to finger-writing. And he tried to point out marks in the plaintiff's signatures, to shew that these are finger-writing of an illiterate man. It must have appeared however that it was impossible to argue that the disputed letters were wrist-writing so that Mr. Hardless came to say that the disputed letters were forearm-writing indeed, but the Ex. 2 (Kumar's signature) was forearm too. As to the disputed letters he grew almost eloquent in their praise, to the dismay of the defendants, so that he modified it after the mid-day adjournment, but his opinion still is they shew extra-ordinary skill, they are forearm and finger. Just as Mr. Choudhury has said, they shew good curves, their horizontal lines are so uniformly thick—some of them—that he is able to say: "Few men however skillful can make their lateral strokes uniformly thick for a considerable length as this writer. That is exactly the opinion of Mr. S. C. Chaudhury and his opinion is that the writer of Ex. 2 who could not help stepping in the course of a small signature was incapable of this excellence.

Now according to Mr. Hardless the Ex. 2 is equally excellent. He admits the step in it, and he was constrained to admit also that the 2nd Kumar's English signatures also shew such tilt-up and arch, as any one can see (*vide* Ex. Z-160 in which photographs of the Kumar's signatures have been arranged in a row). How come these to be arched or stepped if the writer was a forearm writer? He admitted the general propositions—that a wrist-writing tends to arch or to ascend, or becomes a whole arch if the pivot is not shifted to correct it; he had admitted that it tends to rise, and unless corrected by a shifting of the pivot in time, the writing would look like a series of ascending lines, each an incipient arch, whose lower ends will be on a line so that the thing would look like a ladder. He saw the difficulty and began to affirm, deny, and re-affirm his propositions, thought high-sounding words might convey some meaning, said that a forearm writer might very well arch, or step, and he can do that if he places his arm close to the wrist on paper. In short, if he writes with his wrist; in short, if he is a forearm-writer writing with his wrist. In his evidence he had stated untruthfully to sustain his forearm, that the alignment of the Kumar's signatures was even. He had to change that, but he could not change his opinion.

It is perfectly clear that the Kumar was a wrist-writer both in Bengali and English as Mr. Mukherjee of the Alipur Bar had rightly seen. Mr. Hardless who does not know Bengali made a desperate effort to save, the disputed letters by saying that a man who writes English with wrist may write Bengali with forearm. He said this after first saying that he could not say if this is possible. Mr. S. C. Chaudhury had said that a wrist-writer would write both with wrist; and the decisive fact is the step in the Ex. 2. On a technical matter a party is not held to a case put, but it is a satisfaction to find that Mr. S. C. Chaudhury, Mr.

Mukherjee who cross-examined him, and Mr. Hardless as well agree as to the marks left by wrist and forearm writing, and though Mr. Hardless, looking to the deduction, began to waver, he re-affirmed them without possibly knowing it, and caught wildly at straws to take the Ex. 2 and the Kumar's English signatures out of the wrist.

Now as to the plaintiff's signatures—the English ones Mr. Hardless calls them finger, and he calls his Bengali signature finger too. In his examination-in-chief he said that the alignment of the English signatures of the plaintiff is arched (*vide* chart) but as to Bengali signatures he did not mention this point. It had to be admitted that the signatures, both English and Bengali, of the plaintiff are arched and stepped, and that means he is a wrist-writer too. A finger-writer would not arch. Mr. Hardless following the bookish definition of finger-writing said as to the plaintiff's signatures that they have been written bit by bit, each letter separately which means change of pivot at each letter or even part of a letter. So that an arch or step of the kind could not occur. The signatures of the plaintiff being shewn to him—those in his own chart [160(2)] he admitted he did not see change of pivot at each letter, but at short intervals, and asked to point out the pen-lifts that must mark those intervals he said that shifting of pivot may take place without pen lift, as in the case of blind men who shift but lift not the pen, lest they should miss the line. This is to say, the plaintiff was changing pivot without leaving evidence of doing so. The whole thing is ridiculous. Mr. Hardless has put down a lot of points of difference between the plaintiff's signatures and the Kumar's, besides this difference of movement, but none of them are fundamental. They might occur between the two signatures of the same man, some of them and all might occur between two signatures separated by years, particularly

years of abstention from writing. I do not propose to go into each of these points in detail and try to compute the effect of age, or disuse, or feebleness on a man's writing, because it is Mr. Hardless's evidence that has gone to establish that the signatures of the plaintiff and those of the Kumar are those by the same hand. I turn to that short point at once.

It will be recollected that on the Memorial sent to the Board of Revenue there are 19 signatures of the plaintiff, and there were some on documents filed in 1929, and some written at Court during trial and some filed in court, but written nobody knows when. Now Mr. Hardless has pasted on his chart 7 of the signatures from the Memorial, and below them 17 signatures including signatures made in 1929, 1930, 1933. The whole series may be called the P series and the 2nd Kumar's signatures may be called K series—these are on the left flap of the same chart; so that one can see the two sets side by side. Of the P series the 7 signatures from the Memorials may be called the J series as has been done.

Mr. Hardless agrees that the whole of the P series including the J lot are by the same hand. And he adds:

(1) The J series must have been copied from a model like one of the K series. They are written slowly, carefully, and up and down strokes are equally thick as though the writer was drawing.

(2) The rest of the P series are freehand natural writing of an unskilful writer.

(3) The J series have certain uniformities of their own, the rest of the P series have certain uniformities of their own; that these uniformities are modifications of the writing habit of the same man.

(4) The writer of the whole P series has practised writing, as shewn by the uniformities in the whole series.

(5) That these “consistent and recurring characteristics” are not in the series.

Asked whether K could degenerate to P, he utters a general proposition. If you have acquired some fixed characteristics, you can not lose them, though they may be modified; and a little practice could bring them back. One of his ‘fixed’ characteristics is gone—the penhold. As to the rest, I am not satisfied that any of them could be fixed.

I have looked at the 19 signatures on the Memorial. Out of these have come Mr. Hardless’s J series which he says must have been copied from a model. He had to say that as there is no mistaking the resemblance. His photographic enlargement is misleading. In the original I find that the 19 signatures must have been written at the same sitting with the lightest of touch. It is impossible that anybody could write them, unless he knew to write. When did the plaintiff learn to write? Not after 1921 seeing that he does not know the letters. Possibilities have been argued in this case, but is it possible that anybody who wanted this person to imitate the 2nd Kumar’s signature would not start with the letters? Would it occur to any literate person that drawing would be safer, drawing with ignorance of the letters which took every body aback, and filled the plaintiff with a discomfiture which he was feeling keenly. No amount of evidence will convince me that the 19 signatures were drawn. That is impossible. That is excluded by the differences in the signatures of 1929 and the signatures of 1933, natural variations, not produced by want of a model. And how comes it that he knows the letter ঞ in the Bengali signature, and the letter “M” in the English? His ignorance of the letters is conclusive proof that he has not been taught writing after his

appearance in 1921 ; but he writes the signatures, English and Bengali with a faint memory of at least one of the letters. The writing habit which Mr. Hardless speaks of, and whose measure he has given as he would place him at W in classification of writers in order of merit from A to Z continues from his pre-Darjeeling days, and his signatures are the remnant of those days. It reminds me of the evidence of Mr. Haladhar Roy, a director of the E. B. Flotilla Co., Ltd., that in 1926, if not earlier (*vide* Ex. 24), the plaintiff, one of its first Directors would sign orders just as Mr. Roy did. Mr. Chaudhuri for the defendants elicited that in cross-examination. It was contended that the plaintiff, if he were the Kumar, would not forget the letters, nobody does. Knowledge of letters, like every knowledge may be forgotten, and lapse from a bare literacy to illiteracy is a common and intelligible experience, without the evidence of a learned lecturer of the University who mentions a concrete case. Any one who tried to learn or learned Urdu, or Sanskrit, and never kept it up, forget even the letters, and in a man barely literate, lapse to illiteracy, retaining the ability to sing, occurs if he keeps signing, but does no other reading and writing, till the signature becomes a mark, and its components slip from memory, particularly if even this is not written for years.

I find that the signatures of the 2nd Kumar, and the signatures of the plaintiff, seen by the two experts are by the same hand, and that Mr. S. C. Chaudhury is right.

This ignorance of the letters, like the ignorance of Polo which the plaintiff mentions in examination-in-chief, this complete ignorance confirms the opinion that I have formed that the plaintiff has been left perfectly untouched so far as tutoring goes, which, like the sending of the

distorted photo to the Board of Revenue nobody will do, if they were not sure of the man.

I have not dealt yet with that portion of the cross-examination of the plaintiff which was intended to shew that he was not a Bengalee. Most of it is a play on words, or flourishing of words, well-calculated to puzzle an illiterate man. I shall go into it in detail, particularly the choice of a West Bengal Nursery rhyme to test him. I propose to deal with this matter when I deal with the topic as to whether plaintiff is a non-Bengalee.

Admission and conduct of parties and certain other matters.

After the plaintiff closed his case the defendants who did not virtually touch his memory in cross-examination began to put things into his mouth; that he could not say this, that he could say that, to such and such persons. I have dealt with some of them without dismissing them on the short ground that they were after-thoughts. There may be a meaning though I do not appreciate it, in not putting to him things about the Kumar that came to be said, but none in not putting to him things that he himself is said to have done or said.

Of these I dealt with the Tea-party of the 1st Baisak. The admission there alleged to have been made is no more a fact than the party itself which has been disproved by the facts I mentioned.

I have dealt with the alleged interview with Mr. Kiran Gupta with a D. S. P. who came to do duty for a suggested interview on the same day with Mr. Quarry and Rai Saheb.

The alleged interview with Mr. K. C. De was displaced by facts, and his own admission. It was impossible—this interview with the plaintiff in 1926 at Dacca and Mr. De admitted the interview with the son-in-law of Jyotirmoyee Debi in 1923 as evidenced by his own letter; that came to be fastened upon the plaintiff by a trick of the memory. The plaintiff had first seen him in Calcutta, as he admits, and this must be in or after 1924.

On the side of the plaintiff evidence was given that Mr. Sheridan, an officer of the Police, paid a visit to the plaintiff about the 11th May, and made a report. The report was called for about the 11th May, and made a report. The report was called for but not produced, and there is an end of the matter. One interview of great importance remains. That is the interview with Mr. Lindsay on the 29th May 1921. Mr. Lindsay made a record of that on the same day as he says but not at the same time and place, so that it comes to be his recollection of what the plaintiff had said in Hindi as the conversation he says, was in Hindi. It was not read over to the plaintiff and Mr. Lindsay's ability to follow Hindi—its extent—is not known. There is a letter of Mr. Lindsay on record from which it appears that Mr. Lindsay delayed seeing the plaintiff's Guru, Dharma Das when he arrived at Dacca as he was waiting for Mr. Quarry who knew the language better. Now in this record of the interview there is nothing against the plaintiff except that he, according to the record, had said that at Darjeeling he had been ill of pneumonia for 2 or 4 days, and that when he went to Darjeeling from Jaidebpur he was not ill, except for a boil just above his right knee. These answers were given in answer to questions put by Mr. Lindsay. That he mentioned the boil and did not admit syphilis, supposing the record is correct, is not very unintelligible but it would be most unsafe to take

this report, not read over to the plaintiff, nor taken down in his presence, as correct. For instance, I find it difficult to suppose that Mr. Lindsay knew the Hindi for pneumonia unless the plaintiff used this very word, and here again one finds the difficulty created by the fact that the plaintiff was not likely to have been put before Mr. Lindsay, unless he was the Kumar himself, without being taught the story of the poisoning which soon after the 4th May was telegraphed to Satya Babu in Calcutta. I can not find that this document can be taken as a correct record of what was said, and Mr. Lindsay had no independent memory of it at all.

One other evidence of admission is that of Babu Debabrata Mukherjee, a retired Subordinate Judge. He would see the plaintiff on the river side when he used to be there as a Sanyasi, and he says that the plaintiff told him he had left his *mulluk* "perhaps he said Punjab"—when so old pointing to a boy of 11. I attach little reliance to memories of casual conversations, and I notice memory played him a trick, and made him put another statement into his mouth which in a former statement he had not done, and which he withdrew, as the former statement was shewn. This new statement which he withdrew would suit the defendants looking to the case made touching the identity of the plaintiff. That shews that things were being heard, and getting mixed up with memory. The admission has not been proved, nor is it inconsistent with the plaintiff's role, as it was before *Atmaparichaya*.

The memorial presented by the plaintiff to the Hon'ble Board of Revenue in 1926 was frequently referred to by the learned Counsel for the defendants, but nothing inconsistent with it has been held as true unless it was common ground or established by the evidence on the side of the defendants. The Memorial, be it noted, was not a

plaint, but a petition for an inquiry, and the evidence on the side of the plaintiff is that it was drawn by a Sub-Deputy Collector who knew the family upon materials furnished to him, including the evidence taken in the defamation case of Dr. Ashutosh. It is written in a picturesque and pompous manner, and to it was annexed the depositions taken in the defamation case with a statement that these had led to a judgment in plaintiff's favour. I do not agree that that made the deposition *en masse* admission of the plaintiff who was not a party, any more than the statements made by the witnesses in this court are the admissions of the parties who called them.

There are some admissions of the plaintiff that touch the account that he has given of his life as Sanyasi or the reason that he gave of the impediment I mentioned in his speech. These will be considered under those heads.

Of the evidence going to shew the 2nd Rani's conduct or admissions I need notice the following:

Kamalkamini Debi, the aunt of Phani Babu, deposes to a conversation she had with the 2nd Rani at Calcutta after the plaintiff had made his appearance. The Rani denies it, but the conversation discloses no admission which a false witness would throw in, and nothing need be said on this point.

Sudhanansubala Debi, a maternal aunt of the 2nd Kumar, says that she called at the house of the 2nd Rani at Calcutta while she, the witness, was staying at the house of the plaintiff in Calcutta. She says in cross-examination that when she went to see the Rani everybody in the plaintiff's house including the plaintiff and Jyotirmoyee Debi knew it. She met the Rani, told her that she had recognised him, and there was no doubt that he was the 2nd Kumar. "You just see Mejo Koka once" she said. The

Rani, according to her said: "What's is the use. Heard from brother or somebody that he was not the same man but a Punjabi who had come in the garb of a Sadhu to enjoy the Raj." The Rani admits this visit by the lady, but denies the words put into her mouth—hardly any admission—and gives a different version of the conversation. Nothing can be decided upon it, but the Rani's own conversion leaves the essence of it. She admits that Sudhansubala met her, and asked her: Why don't you see him once? The Rani told her that if it were necessary to see him, she would do so, and would not wait till she spoke, and besides she had seen him and so forth. She adds that Sudhanasubala said on her inquiry that she had come from the house of Jyotirmoyee Debi. There is nothing in the admissions, but though nothing is impossible. It is hardly stateable that Jyotirmoyee Debi, if she had set up knowingly an impostor sent this lady, which she certainly did, to gain over the Rani. I see in this a hope that the wife's heart, on seeing him, might melt and defy the brother.

In her deposition the Rani told the court how she had seen the plaintiff, and when. It was during the period of his stay in Calcutta which, as we know, was from 1924 to a date in 1929. She first saw him when on a certain day he and Budha were driving slowly on a phaeton opposite her house. She was on the *Gariveranda* facing the road, and open, partly screened by a road-side Kristochura tree. The phaeton drove slowly, and stopped opposite her house. Budhu pointed at her, and the plaintiff whose back was towards her, turned back to see her. The phaeton stopped there for five minutes. The second occasion within a week was at the same time and place. The phaeton had stopped on this occasion too. The plaintiff thus passed and repassed her house several times, but the phaeton did not stop on these occasions too they had probably seen her.

The plff. and the Rani she goes on, saw each other in front of the Victoria Memorial while she passed in a car, or landau, and the plff. driving, or going in a taxi, or taking a stroll, and they saw each other thus on the strand where people drive in the evening and also once, that much later, near College square. Mr. Chatterjee sees in all this recognition and the curiosity, if not the yearning of a woman's heart, which nothing can stifle. It might also be the curiosity aroused by an impostor, and on the plff's side an attempt to have a look at her, so that he might know her if called upon to do so. A trifle excess in these sights which the Rani admits seems odd even from these points of view, but the conduct at best is ambiguous, and aids no conclusion.

About the end of January 1934 the Rani went to Jaidebpur nearly 23 years after she had left it. She interviewed a lot of people from behind the purdah, and some of them have deposed. She says they had come to pay their respects, but the witnesses say that they were brought by the local Naibs to see the Rani, and the Rani requested them not to depose for the plff. (P.W. 108, 110, 124, 147, 151, 177, 208, 74, 93, 104, 110, 147) some of them mention Rai Saheb or Ashu Doctor, as present at these interviews. They say that on being asked not to give evidence, they said they had recognised him, but could not she see him once? One witness Mejbaha-uddin, a rather big Taluqdar of Fuldi, who had gone to see her too—the witness was not speaking of the same day says that he and Dr. Shayamsuddin took their seats and the Rani was behind a screen, and as they took their seats, Ashu Doctor lifted the screen, and the witness made his *pronam*, and tendered a rupee as nazar. She asked him to see that nobody of his parts deposed, whereupon the witness said: "We have recognised him as Kumar. Let us

bring him to Jaidebpur, with your leave, and we are sure you would know him too. Why waste money of the estate?" "Hearing this she burst into tears and said : " "How is that possible now?" One Mannohan Bhattacharjee, a small man and a former servant of the 2nd Rani, went to her at Rajbari at Nalgola, and his evidence is that he pleaded with her to desist from the contest. The 2nd Rani admits this visit, but says he had gone to frighten her as a messenger from the plff. What gave courage to this man to go into the Rajbari itself with such a mission, if not the truth known to both? The case will not be decided on this sort of admission, and if the identity were not otherwise proved, it will go for nothing, but if it is proved I should believe this evidence as true.

One other matter I should mention. Of the witnesses who swear to the identity of the plff. many depose to having had conversation with him, and many were recognised by him. Of these I should mention one humble witness Sambhu Nath Chakravorty (P.W. 114). He used to be an assistant in the now defunct tailoring firm, Graduate Friends, and used to go to Jaidebpur to take orders from March 1907 to 1913. His visits would last 10 to 15 days. He knew the Kumars, and went to see the plff. at Bose Park, Calcutta, in 1924. or January 1925. He says he recognised him after seeing him for 2 or 3 minutes. He went in, shouted, "bearer" "bearer" as visitors do, but found himself face to face with the plaintiff. He knew him, went up to him, made his pronam, and the plff. asked him who he was.

"Look at me well, and say who I am" I said. He looked at me and said. "I can't quite recognise you". I said I used to go to Jaidebpur and executed orders for jama. Then the plff. said. Apni gejut nakire moshoy'".

The 2nd Kumar used to call me Gcjut (a contraction of graduate).

There are bits of this kind scattered throughout the evidence on record, and of these I remember particularly the interview with Abdul Mannan and Jadab Basak, but as I said the case will not be decided upon the testimony of particular person unless it stands the tests that rest on admission or indisputable facts.

I have examined so far the body and the mind of the plff. feature by feature, and seen nothing that displaces the identity proved by direct evidence of the kind stated, and by a collection of indisputable features that can not occur in a second individual. I have found that the handwriting is the same, and the plaintiff is untutored. I have shown significant conduct of the side of the defdts, the dread of the medical report for instance, or the dread that led Satya Babu to request Mr. Lethbridge to safeguard the evidence of death within a day or two of the declaration of identity, and certain other things I mentioned, and which I shall mention when I conclude, when they all emerge. Nothing in my opinion can displace the identity, unless it appears that the 2nd Kumar died at Darjeeling, or that the plff. is Mal Singh of Aujla or not a Bengalee at all. Before turning to Darjeeling I need only allude to two facts. The plff. mentioned three marks on the person of the 2nd Rani of which two would be known to the family, so that this knowledge of these two proves nothing. He mentions a third which, if it exists would be known only to her husband. She denies this mark, and in view of this affirmation on one side and denial by the other, the point is of no use.

Another fact is that Mr. Choudhury for some reason which I could not understand put to a nephew of the

Kumar (P. 938) a certain question. He asked whether it was not a fact that the 2nd Rani had once conceived. Billo had never heard of it, and Jyotirmoyee Debi was allowed to be recalled, in order that she might be asked. She denied that she had conceived at any time, and Mr. Choudhury asked her in cross-examination whether a sister-in-law is likely to know if only the natural thing with women had stopped for three months. She said that even such a thing would come to her knowledge. One would suppose that that was end of the matter, but in her examination-in-chief the Rani spoke to the mother-in-law's suspicion that she had conceived until the course began again; and then in cross-examination she spoke of an abortion. That led to charges of conception and child-birth outside coverture of which there was not the slightest suggestion before, and for which there is not the slightest foundation in evidence. I regret the topic was introduced, and I condemn the charges it led to.

DARJEELING

As I said in the narrative in the earlier part of this judgment, the 2nd Kumar returned from Calcutta about the 7th February 1909, and set out for Darjeeling on the 8th April. Satya Babu had come from Calcutta about a month before, and began by giving a false reason for doing so that he came to go to Shillong and went to Shillong with a view to a post in Government service, but confronted with a letter he admitted that he had not gone to Shillong then, but in October. It is not necessary for me to go into the question as to whether he had come to Jaidebpur, so soon after he had met the Kumars continually in Calcutta, to inveigle him to Darjeeling so as to do him to death. The point is whether—the Kumar had died at Darjeeling. That requires investigation into the cause

of the alleged death, and whether it was natural or violent, supposing it had taken place, it would mean an end of the plff.'s case. No party has been charged with conspiracy, and case of the plff. as put to the Rani is that she is being charged with nothing.

Before the 2nd Kumar started for Darjeeling Satya Babu and Mukunda, his personal clerk, referred to as Secretary, had gone to Darjeeling to engage a house. They engaged a house known as the "Stepaside", and one of them Satya Babu came back, and is said to have reported that the house was small, and inconvenient for widow, so that on this occasion the 2nd Rani had to go without an elderly female relative in the party. It is not admitted that Satya Babu contrived to keep Jyotirmoyee Debi or Satyabhama Debi out of the affair, but it is a fact that the 2nd Rani or any *bow* (younger wife) had never before gone with her husband alone, without the sisters, or one of them.

The party that set out from Jaidebpur has been rightly described as a motley crowd and the full list occurs on page 62. Of the menial servants it will be necessary to recollect the name of Sharif Khan a durwan. There were three maidservants, a cook, Ambika, and a *baburchi*, besides the gorkha guards. There were four khansamas, including one Bepin (D.W. 141). Leaving aside the menials the rest of the party were.

1. Dr. Ashutosh Das Gupta
2. Birendra Banerjee
3. Cabral
4. Satya Babu
5. The Rani
6. Kumar
7. Anthony Morel
8. Mukunda Guin, the secretary

Cabral was an old servant, but of the upper menial kind. Satya Babu says that he used to do marketing at Darjeeling and he was half tailor and half agent of the Bhowal family at Dacca. Looking to the thing he had been doing according to Satya Babu's Diary he was little better than a menial, and he was illiterate, though he could sign his name (P.W. 205 Kristo). Anthony Morel was an upper menial and was about fifty. He had been in service for about five years.

Except Anthony and Cabral, the rest were young men of whom the eldest Mukunda, was thirty. The Kumar was under 25, Dr. Das Gupta was 25. Satya Babu was 24. Birendra was 21. The Rani was barely 20. Birendra admits that he got no salary, from the estate. It was Mukunda alone who got such salary, and has been appointed to the post of Mecbin who had died. Mukunda and Birendra kept the 2nd Kumar's accounts and they kept such accounts at Darjeeling. Birendra had been appointed, so he says, some eight months before. Mukunda who was an employee of the estate had recently joined as the 2nd Kumar's clerk, and his education, as his brother says, was up to B.A. Satya Babu was a B.A. and reading for B.L.

The party occupied "the Stepside", the first house on your left, as you go down the Rangit Road from the Chowrasta. There is a recent map of Darjeeling on record, and in this the house occurs—the house numbered 201. It is a small two storied house with five rooms on either floor, and running parallel to the Rangit Road which runs north and south. The front room on either floor faces south, and in front of the building is a little compound with little flower garden. You enter the house by a gate on the road side opening into this compound. The five rooms

on either floor open into a veranda that runs the whole length of the building. On the back of the building i.e. on the north beyond a little space was the chakran, or the servants' quarters and the kitchens, and for these there was a separate staircase rising from the road.

The following sketch will show the position of the rooms in the first floor at a glance.

1 to 5—rooms opening into the verandah

6 —Roadside verandah (See Appendix

7 —a narrow verandah in front for sketch)

—servant's quarters

—hill path 1 heading to verandah 7 in the first floor.

This is the top-floor, and there are corresponding rooms below. The road opposite the building has taken a curve at the point so that the verandah on the road side has followed the curve of the road. The building is set against a hill on its west and on that hill is the house known "Pecotip."

(Opposite the gate, as you enter the compound you find before you the end of a hill path, and by it you can get to the small verandah in front the one numbered 7—and thence into the front room No. 1. This path has been referred to as the sloping path on the west of the rooms in the first floor are bathrooms attached to each, and built into the rock, and on the west of these is a passage which leads one to the kitchens on the back and to which too you can get from the sloping path mentioned. You can also get further up, and get to "Pecotip".

So many points in the topography of Darjeeling will become material in the discussion that will follow that I

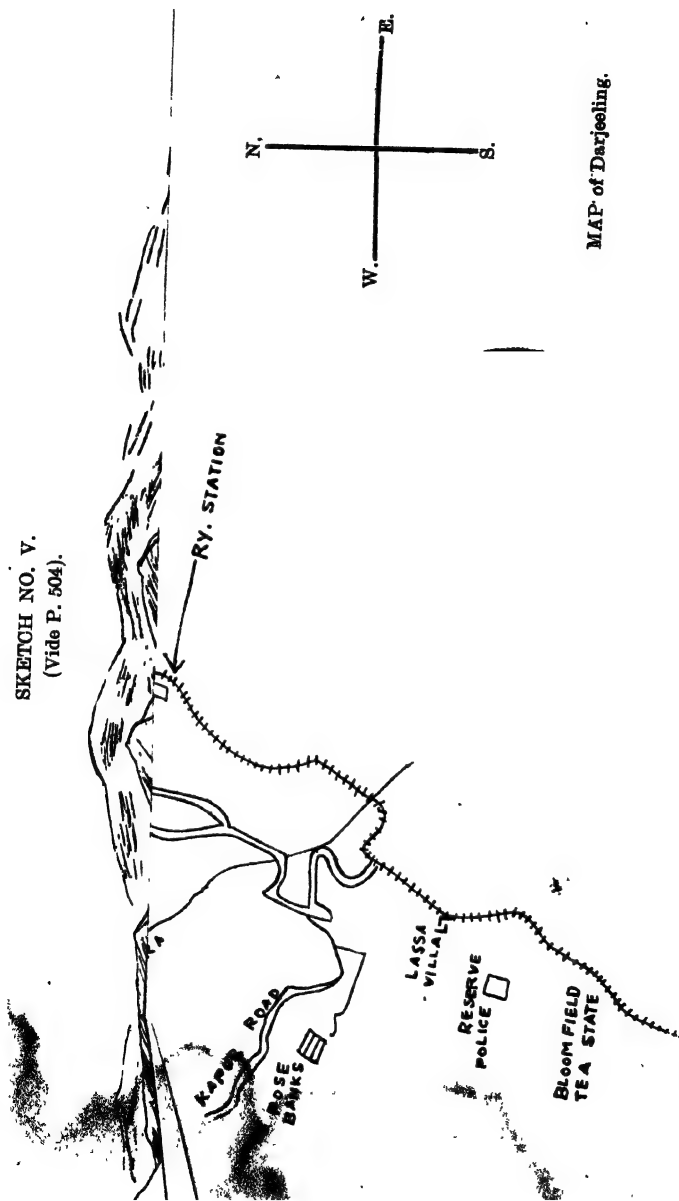
give below the sketch collected from the evidence, not drawn to scale, but just to indicate the relative situation of the points, and to save a long description :

1. Stepside
2. Peacotip
3. Mall Villas No.
1, 2, 3.
4. Dutkothi, a Villa
C. H. Chaurasta
- a, b, c, d, Old Sudhir Kumari Road
V. vegetable garden
e, f, g, h New Sudhir Kumari Road issuing
from consery Road
k, a small path leading
to the veg. garden.
T. Tannery
6. Emil's cot

It will be seen that the stepside is on the Ranjit Road which issues from the Chaurasta, and goes down to Bhutia bustee and beyond.

From the stepside to the Burning Ground, new or old, it is continuous down hill; and the distance by the tortuous hill paths is 2 or $2\frac{1}{2}$ miles according to the evidence which is correct as from the map it is 1 mile as crow flies. From the stepside to the Burning Ground the journey is downhill, and takes about one hour. Rose Banks is the residence of the Maharajah of Burdwan. It will be seen that one could overlook the Burning Ground from the Rose Banks, as the Maharajah wrote in May 1921.

SKETCH NO. V.
(Vide P. 504).



MAP of Darjeeling.

In the region of the burning grounds extensive changes as will appear below, have taken place since May 1909 and attempts made by the defence to put back to 1909 things that since came into existence after the documents touching the cremation grounds were produced by them, and read with a map which the plff. produced. In the Mall Villa No. 1 was staying in May 1909 Dr. Prankrishna Acharya, a renowned doctor of Calcutta.

It will be seen that the cart road cuts through Darjeeling. The Darjeeling Himalayah Railway runs over it up to the point called the goods shed, but the station for passengers is at the point I have indicated close to it, but at a lower level is the Sanitarium, Lowis Jubilee Sanitarium where Indians who come up to Darjeeling for a change, and who are of better position put up.

It will also be seen that, as you come up to Chaurasta, from the stepaside you find to your left a road called the commercial row. You go down it, come to a point where it meets the Robertson road and Auckland road. You go down the Robertson road, only a little and then a little of Lloyd road, and you find yourself on the cart road, near the goods shed. At the goods shed a road runs down towards the west, called the Ferndale road, and you go down it and then get into the conservancy road, go down its winding till you come to the Victoria road, and going a little along the Victoria road, you find on your left a foot-track which leads to the Sasan. This foot-track, or path some three feet wide, unmetalled, with shrubs and trees on either side, and steps at places, where two people could hardly go abreast boasted the name of Sudhir Kumari road in 1909. So far there is now no dispute, and in this account I have imported no personal knowledge. It will be found in the evidence read with the maps, and the proceedings of the Hindu Burning and

Burial ground committee put in by the defdts., and the correspondence that proceeded the opening of a new Sudhir Kumari road in 1922, which also I indicated in the sketch I shall have to go into these papers to examine the case as to the cremation of the 2nd Kumar, but the route I have just described may be referred to as the commercial Row route to Sasan. It is impossible to go to Sasan from the Stepside by another route. You cross the chaurasta, and instead of turning to your left to get into the commercial Row, you turn to the right and get down a Road called Thorn Road and you go down, and down through a lot of roads past the Victoria Hospital along a road running through it called the Hospital Road, cross the Botanical Garden Road get into the Laldighi Road till you descend into the Cart Road. You descend at a point, north of the Market, and you proceed towards the Goods shed past the Market, and the Cutcharee Building opposite it till you get to the Goods Shed. From that point the route is the same and there was one route : Ferndale Road Conservancy Road, Victoria Road, old Sudhir Kumari Road.

You go down this road and at a point where it makes a curve you find on your right, as you pass the curve, and go further down, the old Sasan. If you go further down, you come to the new Sasan on its south. There is still a question as to whether in May 1909, when the new Sasan had come into existence, the approach road to it was complete, whether the old Sasan was still in use and whether between the two there was a jhora, as the maps show there was. These points will require another sketch, and a little detailed description, but it is agreed now that in May 1909 there was at the site of the old Sasan no shed of any kind, but there was one in the new.

(On the east and west of the area of the Sasan there used to be vegetable gardens formerly held by the Municipality, and subsequently let to Mr. Morgenstein by the Municipality and his home I indicated by 6. It was called Emil's Cot though later after 1914 it came to be called the Rosary.

The Sasan area, it will be seen, is between two jhoras or hillstreams, the Benguin jhora and the Kagjhora. The area between these two, in fact the area west of the Victoria Road is low, and jungly, and though there is no exact evidence as to the altitude, the two jhoras meet a little to the west in the Valley, though Darjeeling is nearly 6800 ft. high.

The Kumar and his party arrived at Darjeeling on the 20th April, and died or was supposed to have died on the 8th May 1909, a Saturday. He was thus at Darjeeling for exactly 19 days, leaving aside for the moment the plff's account as to what happened after that date.

The plff. says he went to Darjeeling as Satya Babu proposed after his arrival at Jaidebpur in March 1909, a spell in the hills. There was nothing the matter with him except syphilis. Arriving at Darjeeling, he says : (I have shortened it slightly).

"I was keeping well. Then I got ill, 14 or 15 days after my arrival. It began with flatulence at night. That night I spoke to Ashu Doctor. Next day, a European doctor came. He prescribed a medicine. I took it. On the 3rd day he took the same medicine. It did no good. That night at 8 or 9 p.m. Ashu doctor gave me a medicine in a glass (Shows a small glass). It did me no good. As I took it, my chest burned, and I vomitted, and became restless. These symptoms appeared 3 or 4 hours after

I took the medicine. I began to scream. No doctor came that night."

On the 4th day: "Next morning I passed blood stools—the motions were in quick succession. My body got feebler then I got unconscious. I do not know whether any doctor came till that moment".

In cross-examination Mr. Chaudhury just touched this account, and all that he elicited was that the plff. had heard the name of Dr. Calvert on the first day: and that when he on the 2nd day Ashu doctor gave him the medicine, he screamed, when his chest burned and he felt a vomiting tendency, and cried: "Ashu, what have you given me?"

On this account the sequence was this;

5th night—Flatulence.

6th—Dr. Calvert came and prescribed.

7th—The same medicine. No doctor. At night Ashu gave some medicine which, after some interval, made his chest burn, and made him vomit.

8th—Bloody stools followed by unconsciousness. No doctor till then, as far as the plff. knows.

The case of the plff. is that on this day, the 8th he was taken to have died at between 7 and 8, taken to the Sasan, the old Sasan by a party of men for cremation and as got there a few minutes after came a heavy shower of rain with high wind or storm, and the party of men, not finding any shelter there ran up for shelter, and left his body alone, and that four Sanyasis who happened to be in a cave close by found him there, and finding him alive took him away, and hid him: that when the rain stopped, and the cremating party, including Satya Babu, returned they found the body gone, and that they went

away, and the next morning, a body, secured at night was taken to the Sasan with a procession but wholly covered up and burnt. It is said this was done to avoid a scandal that a Kumar of Bhowal should have been thrown away like a cat or dog.

The defdt's case is that the Kumar fell ill in the early small hours of the 6th May, continued ill on the 7th and died on the 8th at about midnight. He died of biliary colic. As it was not possible to cremate him at night it being Darjeeling his dead body was taken out the next morning with a procession, and burned at the new Sasan which, according to them, was the only Sasan then in use, during the course of the day.

On the side of the plff. there is no evidence going to the illness except that of the plff. himself, and as to what happened till the "death" occurred, his remains the sole testimony. He is entitled to prove, however, by the witnesses on the side of the defdts. what had happened, or that what they say, in conflict with his account, is untrue, and he has called witnesses who found him "dead" a little after dusk, or carried him to the Sasan for cremation at about 9 p.m. and found the body missing after they returned from shelter they had taken during the rain.

On the side of the defdts. have deposed Dr. Calvert who treated the Kumar, and the following witnesses :

1. The 2nd Rani, 2. Satya Babu, 3. Dr. Ashutosh,
4. Bepin, the Khansama, 5. Birendra, the personal clerk.
6. Anthony Morel who was one of the party at Darjeeling,
7. Jagat Mohini Debi, nurse, 8. Shyama Das Mukherjee,

the cousin of Satya Babu. These speak to the illness and the first six to the whole course of it and to the death. Dr. Calvert speaks, practically, to the whole course of it and to the death. Besides these, there is a large number

of witnesses who speak to the morning procession, and to the case that the body, then carried and burnt, was that of the Kumar, or what is enough for the defdts' purpose, was not covered up, but seen.

There are 96 witnesses going to this topic, though not all going to the death and illness or cremation, but most of them do so, and many on the side of the defdts. have been examined on commission.

To appreciate the evidence, it will be necessary to state certain facts. It will be remembered that upon the declaration of identity by the plff. on the 4th May Satya Babu proceeded to Darjeeling on a date before the 15th May with a barrister, and during that trip certain witnesses were examined by Mr. N. N. Ray, a Deputy Magistrate of Darjeeling and their statements taken down. It is not known how many were examined then, but among them was Khetra Nath Mookerjee who has been examined by the plff. and who was examined at Darjeeling on 17-5-21. When this taking down of the statements was going on, Satya Babu and the G. P. Rai Bahadur were at Darjeeling and staying at the same hotel, and the barrister was also there. This barrister was a relation of Mr. N. N. Ray. I mean no reflection whatever on Mr. N. N. Ray, but when Satya Babu says that he took him to Darjeeling just to give him a change, I do not believe him, nor do I believe him when he says that he did not know what the witnesses were saying: but that is not material. What is material is that this inquiry that began was not, and has not been proved to have been, at the instance of the Collector; though later, it went on at his instance.

It is not known who had framed the questions which Mr. N. N. Ray was putting to the witnesses examined in May but a set of questions were framed later, and the

inquiry took the form of putting those questions to the witnesses and getting them to answer them. This set was framed by Rai Bahadur, the G.P. on the 3rd June, and it was sent to Darjeeling in order that these may be put to the witnesses and, their statements recorded by Mr. Ray. This set of questions, framed by Rai Bahadur, was forwarded to Mr. Goode, Deputy Commissioner of Darjeeling on 7-6-21 (Ex. 443) with a Note; and still later, a set of questions were framed and printed for this purpose. This last was framed by Rai Bahadur Rames Chandra Dutta Deputy Magistrate of Dacca, who was placed in charge of the papers connected with this inquiry. Mr. Rames Dutt examined for the defdts. says that he framed this set of questions and asked Rai Bahadur whether these would do and this questionnaire which had come into existence after the 7th June at the earliest began to be sent to witnesses direct, or to officials so that they might record the statements. Yet Mr. Choudhury was asking the witnesses examined before this printed questionnaire came into being why they had not answered such and such questions or why looking to the questions, he had not given certain details. It is another instance of putting back things that was happening in this case.

With the Mss. questionnaire framed on the 3rd June was sent by Rai Bahadur a Note in these terms :

The story of the Sadhu.

"The Sadhu says that he is the 2nd Kumar of Bhowal Kumar Ramendra Narayan Roy. His story is that on the mid-night of the 8th May 1909 the doctors thought he was dead, and declared him to be so. The body was then removed to the burning ground where it was placed on the funeral pyre, and before it was set on fire, heavy storm and rain came, which drove away the attendants,

that the rain subsiding the attendants returned to the burning ground but found the body gone. They however set fire to the wood, and returned home with the story that the dead body of the Kumar had been cremated. The story further is that when the attendants had run away a Sanyasi who was close by came to the funeral pyre, perceived that the life was extinct removed the body to his quarters, and by the application of some charm, the body was brought back to life.

Then the Note adds a description of the body of the 2nd Kumar: fair complexion, stout build, of strong physique with brownish hair 27 years old, that he died at the Stepside. It states also that he was there with his wife and her brother and some officers and servants; and added that there was no rain on the 8th and 9th May at Darjeeling according to the rainfall report.

There are seven questions and at the end of the 7th there is a note that "rupees and small bits of coin were scattered and given to the poor during the procession".

It was never the case of the plff.—nobody had ever suggested it that he had died at midnight, or that he had died, but was revived by a charm or that anybody had burnt the wood without the body. His case, as it is and prima facie is absurd enough, but if the Note is for the information of the witnesses—it is difficult to see for what else it was, it looks as though midnight as common ground would, it was expected, keep the mind from jerking back to anything behind it, and carry it straight on to the morning procession by the coins then scattered, stifling all stirring of memory, as regards the rain, by the rain-record.

The printed questionnaire that came into existence later were put in by the defdts. were these:

1. Were you present in Darjeeling in May 1909?
2. If so do you remember the death of the 2nd Kumar of Bhowal, Kumar Ramendra Narayan Roy?
3. Were you present at the death, or funeral procession, or at the cremation of the 2nd Kumar?
4. Did you know the Kumar before? If not, did you see the body after death? Please give a description of the body as far as possible.
5. Can you say when the funeral procession started from the house of the Kumar? When did the cremation end? Which cremation ground was used, and the route followed by the procession?
6. Was there any rain or storm during the procession or cremation?
7. If the cremation was in the morning can you remember if there was any rain or storm in the previous night?
8. Can you remember the name and address, if possible of any person who, to your knowledge, was present either at death, or with the funeral procession, or at the cremation?
9. The deponent should be asked generally if he remembers any of the facts connected with the illness, death, and cremation of the 2nd Kumar.

This questionnaire will be referred to as the questionnaire and it was composed, as I said, by Mr. R. C. Dutt as he has deposed. Mr. Lindsay made a mistake when he said he had probably framed them. There is no direct evidence that statements recorded were in answer to these but one may find out from the answers given whether they were. The next thing to be mentioned before I deal with the evidence is that the documents strictly contem-

poraneous, the telegrams and prescriptions sent, or made during the course of illness were all relied upon by the plff. Defdts. have not produced the accounts kept at Darjeeling. These would have shown the visits of the doctors and the date on which funeral expenses were incurred. It will be recollected that Mr. Lindsay, Collector of Dacca, wrote to the eldest Rani for all telegrams relating to the death and illness on 27-10-21 (Ex. 55) and Bara Rani sent them on 9-11-21. These do not include the telegram admittedly sent to Jaidebpur announcing the death. It was once suggested that the eldest Rani had not sent it but later this suggestion was expressly withdrawn. (Vide order No. 1079 dated 4-7-35.). It is the defdts' case that the Bara Rani had not taken any sides before 1928 and it is not very stateable that she was secreting it. It will appear below who is doing so.

On the 10th May, the day the Darjeeling party left Darjeeling Col. Calvert composed a letter of condolence to the eldest Kumar. That is the letter quoted in the defdts' pleading. He did not know the eldest Kumar. Nobody on the side of the defdts. knows why he wrote that letter, or when he wrote it and Satya Babu has not even seen the original at any time. The defdt. No. 1 sent a copy of it to the Board of Revenue on 5-6-21 (Ex. Z. 160) but he says it was copy of a copy which had been sent to him from Jaidebpur. Col. Calvert, examined in London, was content with saying in examination-in-chief that it was his. He does not say he had sent it, much less that he had got a reply though on the face of the letter is an endorsement.

"Replied 20-5-09"; and as to the contents, all that he says in examination-in-chief is that the nursing there mentioned had taken place.

This letter is not substantive evidence, but extremely

valuable as corroboration, and the case of the defdts. keeps to it as far as possible, and in judging the evidence it should be set forth at once.

I. Monteagle Villa.
Darjeeling
10th May on.

My dear Kumar

Please accept my most sincere condolence on the great loss which you have sustained through the death of your kind-hearted and amiable brother. I am afraid his sudden death must be attributed to a little overconfidence on his part regarding the nature of his illness, and its possible termination.

The morning I was called in he felt so much better that he declined the treatment I proposed, even the earnest solicitation and exhortation of his private secretary, and friends who were most solicitous concerning his condition failed to move him. Later in the day, he had a relapse, the colic coming on in a most intense form. His secretary with praiseworthy zeal himself went round the station until he had found on my rounds, and secured my early attention to the case. This time he listened to the advice of his secretary and friends, and allowed me to adopt the right treatment. The colic quickly ceased under the hypodermic medication but unfortunately the system had received such a shock in the interval that he sank and died from collapse, inspite of all our endeavours. All that was possible was done to save your brother's life, and he received the greatest care and attention from those about him. It would have been a great boon if he could have had his friends around him, but exacerbation of his illness came on so suddenly and terminated so quickly, that it was not possible. He had milder attacks of this nature from before, and it was his recovery from this

which prevented his realising the serious nature of the last one before it was too late.

Yours sincerely,
J. T. Calvert.

Col. Calvert admits that this letter was written at the instance of somebody of the house. There is no doubt that he wrote it on the 10th May, and there is also no doubt some one or other of the witnesses who have deposed before me—the inmates of the Step-aside—knew about it, though none of them would admit it, or admit that they even knew the house of Dr. Calvert at Darjeeling.

On the 7th July 1909, exactly two months, after Col. Calvert swore an affidavit which Satya Babu required for drawing the insurance money. As I said before, it was he and not the estate that took all steps in this behalf, and when his diary showed that and showed also that he actually opposed Mr. Needham moving in the matter, the pretence that this affidavit was obtained by the estate was abandoned. It has not been proved that he had gone to Darjeeling to get it, but he certainly arranged it. The affidavit is on a printed form of the Insurance Company and is in these terms:

Ex. Zill.

Policy No. 74789

Life Kumar Ramendra Narayan Roy
Certificate of death,

I, John Telfu Calvert Lt. Col. I.M.S.

Civil Surgeon, Darjeeling

do hereby solemnly declare that I have known Kumar Ramendra Narayan Roy for 14 days: that I attended him in his last illness; that he died aged about twenty-seven years at Darjeeling at 11-45 o'clock p.m. on the 8th day of May 1909 after an illness of three days; that the cause

of his death was collapse following upon an acute attack of biliary colic (gallstone).

The above was inferred from symptoms and appearance during life. That the symptoms of the disease which caused death were first observed by me on May 6th 1909; and the attack became acute on the morning of the 8th, and he died the same evening.

J. T. Calvert.

This was sworn before H. M. Crawford who signs it and gives his designation as Justice of the Peace, and District Magistrate, Darjeeling.

Mr. Crawford himself signed a certificate of death on 8-2-10. (Ex. Z113). Nobody says he had personal knowledge. Mr. Crawford examined in London does not remember how he came to give it, or how the details had come into it.

It is now common ground that the 2nd Kumar got ill in the small hours of the 6th May 1909. Bengalees would call those hours night, and every witness, like the plff. has laid the beginning of the illness on the night of the 5th.

Before the trial began, when the witnesses were being examined on commission, it was apparently thought that the illness ought to be a 14 days' affair, looking to the affidavit of Col. Calvert dated the 7-7-09. It seems to suggest that the Colonel had been treating him for 14 days though it does not expressly say so, but in his deposition he did not leave it in doubt. He was asked, and he admitted that before he came to depose he had been shown certain documents, and one of them was a "Statement of the case" whose exact contents have been left obscure, though it appears from a statement of Mr. Pringle who

examined him-in-chief that it was only the plaint in the cause. He was asked.

Q.—Were you told that you, assisted by Nibaran and family physician, treated the Kumar for 14 days?

A.—I knew the fact, without any statement. He went on saying that when he saw him first the 2nd Kumar, he was in pain—pain on the right side of the abdomen i.e. the pain of biliary colic. "That is what he had when I saw him first, in consultation, after his arrival at Darjeeling. I watched the condition from day to day says he. So far as I remember he had some minor attacks off and on, finally culminating in the fatal seizure which we were not anticipating."

In short, it was a 14 days affair that he knows and the colic was coming off and on, and he was watching till the final attack came on the 8th May, which is consistent with his affidavit. Apparently it occurred to the defdts. that the affidavit should be saved not only by Col. Calvert, but by others too, and Anthony Morel, examined after Col. Calvert deposed to this effect. The illness he says was occasional fever and colic, and it was going on for 10 or 12 days—that's in examination-in-chief that Col. Calvert began to call, and see him some 2 or 3 days after the arrival of the Kumar at Darjeeling, that he was coming from time to time and prescribed on each occasion till the death occurred.

It is now agreed that all this is false, that the Kumar fell ill on the 6th May, and "died" on the 8th. Since his arrival he was keeping well that is the evidence of the 2nd Rani, of Ashu Doctor, of Birendra, and of Satya Babu. He was well until he fell ill on the 6th, and evidence was given to show that he was going about in Darjeeling, and looking the pink of health and lunching

out, and playing billiards at a Saloon, and talking even or arranging a shoot (D.W. 57, 79, 72, 10). Ashu doctor joins this group in saying that he was well until the 6th, and Satya Babu, and some of the witnesses bring this glowing health down to 6 days before his death (D. W. 57) though Anthony Morel was making him take no lunch at Carlton's as Mr. Pliva deposed later, but barley and sago throughout his 12 days, and longer.

Something was however done to save Dr. Calvert's affidavit. Dr. Ashu says that Dr. Calvert was called some 3 or 4 days after their arrival at Darjeeling, and saw the Kumar, and the next visit he paid was on the 6th, as agreed. That gives you a period of 14 days. Ashu doctor says that on this first visit, say on the 24th April he told the doctor the 2nd Kumar's history that he had syphilis that he was subject to biliary colic. At that time he had no symptom of biliary colic that is to say no pain on Col. Calvert prescribed for syphilis. It will appear below that this biliary colic is a tale, and the fever, malarial fever which the defdts. were putting in was no less so. But let us assume for the moment that he had biliary colic in the sense that he was subject to it, but Col. Calvert never saw it. I have considered whether the defdts. are letting Col. down because the exigencies, arising out of the plff's cross examination, made it necessary to bring the Kumar out in English cloths, and speak to Europeans, and use knife and fork. That is not so. Col. Calvert's 14 days illness and pain off and on, which he watched from day to day is excluded by a single fact: there is no prescription until the 6th May. The plff. proved the prescriptions by producing copies from the books of Smith Stanistreet and Co. and these begin from the 6th May. Ashu doctor admits that he used to keep the prescriptions or their copies carefully. They have not been produced,

and it is not suggested that any attempt was made to get copies of the prescriptions alleged to have been made at the first visit of Dr. Calvert or that these were not available. It is untrue that Col. Calvert saw the Kumar before the 6th May, and it is equally untrue that he had seen biliary colic before the 6th May. Col. Calvert's affidavit, so far as it suggests 14 days' illness and his evidence that this was a fact, and that he saw the pain off and on and so forth, is demonstrably untrue. It is worthy of note that Dr. Calvert had he seen syphilis, or prescribed for it, would put it down in the affidavit, for a printed direction on the margin asked the doctor to state not merely what the deceased had died of, but also if he had any other disease, chronic or acute. It is also worthy of note that in the affidavit he puts down "about 27 years" as the age of the Kumar, though he was not yet 25. It is said Col. Calvert might have made a guess. He did nothing of the kind. This mistake occurs in other affidavits taken in this connection, except that of K.P. Ghosh Rai Bahadur. It is a common mistake due to a common cause. I notice that in Satya Babu's diary he was making inquiries about the date of birth of the Kumar, showing that he did not know the exact age. It is plain that in his affidavit Dr. Calvert put down whatever was wanted giving no thought to accuracy in detail, so long as he had no doubt that the death was a fact.

I do not propose to dispose of the residue of the affidavit that death had taken place at 11-45 on this short ground, particularly as he swears that he was actually present at death at midnight. That will be displaced by other facts which follow. Nor would I rely without, such facts, upon the statement in the affidavit that "the attack became acute in the morning of the 8th, and died the same evening."

I turn now to the admitted fact that the 2nd Kumar was keeping well till his illness began in the small hours of the 6th May.

Before I deal with the evidence going to this point, I should state shortly what biliary colic is, as it will have to be considered whether the prescriptions fit it. On the present topic the plff. has examined Lt. Col. Macgilchrist I.M.S., Retd. M.B., Ch.B (Ed). M.D. (Ed) M.R.C.P. (Lond.), D.Sc. (Ed.). He got his D.Sc. in pharmacology (action of drugs). He was professor of Physiology in the Calcutta Medical College for 8 years, was Civil Surgeon at various stations. He did research work in quinine and mosquito, and in connection with yellow fever, and is Surgeon Naturalist, Marine Survey of Indian and Statistical Officer with Government of India, medical and sanitary, and in special charge of Electro-cardiograph.

The plff. has also examined Dr. Bradly, M.D. (Canada) Ch.M. (Canada), Fellow of the Royal Society of Tropical Medicine.

The defdts. have examined Major Thomas I.M.S., M.D. (Durham) M.R.C.P. (Lond) and Lt. Col. Denham White L.R.C.P.M.R.C.S.M.B.B.S. (Lond.). Sometime Professor of Surgery in the Medical College. The opinions of these doctors are only evidence and may be discussed as evidence but I should add that although none of the propositions of Col. MacGilchrist have, with slight exceptions, been disputed so far they go to the action of the drugs, and although his opinion as to what had happened on the 8th on the given symptoms virtually tallies with that of Col. Denham-white, and the contrary opinion of Major Thomas was obtained by suppressing from him a vital detail that the Kumar had diarrhoea on the 8th. Mr. Choudhury thought fit to ask Lt. Col. Macgilchrist,

whether one Mr. X(not named) had not, when sued by the doctor, made a charge against him in his written statement. Col. Gilchrist chose to answer the question that the suggestion was false but I thought then, and think it still, that there was no reasonable ground for putting the question.

There is no difference of opinion as to what biliary colic is and its immediate cause, whatever its remote cause. Bile secreted by the liver is taken by a duct called the hepatic duct into another duct called the cystic duct which takes it into the Gall-bladder. This last acts as a reservoir, and squeezes bile out by the cystic duct again into a common duct connecting with the duodenum when the intestine needs it for digestion. The sketch (*sketch not available*) on the margin indicates the three ducts—Stones form in the Gall-bladder a morbid condition and they vary in size, like grains of sand sometimes, and these pass out with the bile causing no discomfort, unless one, too big, sticks in the cystic or common duct, and when it sticks, it causes acute pain. That is biliary colic. The pain is described as “intense agonising” in the books. I have been giving the account in Dr. Macgilchrist’s evidence which nobody has disputed so far. The pain comes in paroxysms at intervals of 1 or 2 minutes or may suddenly cease as a single paroxysm may expell the stone and the thing is finished requiring no further treatment except as a precautionary measure. This treatment during intervals of the colic is called “interval treatment”. It does not appear that there are any regular intervals, for there is no knowing when a stone will form again, and will be too big for the passage.

It is also agreed that the development of such stones is preceded, or accompanied by, dyspepsia. Col. Macgil-

Christ did not deny this, but did not admit any casual connection; but the fact remains it is an usual concomitant be it effect or co-effect. Mr. Choudhury put to Dr. Bradley whether Price is not an authority, and the doctor admitted that he was. In his book on medicine he does not go further and confirms the very thing that Dr. Macgilchrist has said as to the immediate cause of the disease. Whether the ultimate remote cause is infection, and inflammation of the Gall-bladder always or whether there may be such a thing as a pure cholesteral stone, the bladder being perfectly sterile, would not be material, except for a certain speculation of Dr. Thomas to which I shall come: but Price mentions this, as a possibility and actually found such stone.

During paroxysm, the pain whose origin is in the duct shoots to the right shoulder not to the stomach. The thing has nothing to do with the stomach into which bile does not directly flow except by regurgitation from the duodenum. It is also worthy of note that gallstones occur about twice as frequently in women as in men, and in postmortem, about five times oftener, and 75 p.c. of clinical cases—cases complained of and seen occur between 30 and 60, 40 to 60 being the most common age (Price). It is also agreed that death from biliary colic is extremely rare and one thing as to while there is no difference of opinion is that in a case of gallstone "Constipation is complete", as Price says or generally present as agreed. It is also agreed that there is no cure for biliary colic except an operation. The only medical treatment in paroxysm is administration of opium to relieve pain, and the usual, and the most effective way of doing that is hypodermic injection of morphia. During interval there is as already said, another treatment, supposed to prevent the growth of stone, or to increase the secretion of bile

and though as to this opinion vary, the treatment is special, and is called "interval treatment."

The evidence of Dr. Calvert is that the Kumar died of biliary colic due to the impaction of a stone in the cystic duct. One other fact need be mentioned. In giving the account, they do, of the illness and death of the Kumar, the Rani and Satya Babu are not hampered by any previous statements. Dr. Asutosh and Birendra, however, previously deposed on the subject, and in cases where the matter was in issue. Dr. Asutosh deposed twice in the Defamation Case in 1921 in which he prosecuted a man for charging him with poisoning the Kumar at Darjeeling. He deposed before Mr. S. P. Ghose, Deputy Magistrate, and again before Mr. B. M. Ghosh, another Deputy Magistrate, who held a re-trial. He deposed also in a title suit referred to as the Sreepur Case before a Subordinate Judge of Dacca. In the Defamation Case, as I said, the prosecution was conducted by Rai Bahadur S. C. Ghose, G. P. of Dacca, who had appeared for the defendant in this suit. It was really a prosecution by the Bhowal Raj. It will be recollected the Assistant Manager was praised for carrying it to a successful issue. In the Sreepur Case too Dr. Asutosh deposed for the defendant who were the plaintiffs. Birendra deposed in this last case alone. It is only necessary to read Dr. Ashutosh's former deposition and his present evidence to see that this doctor came before me not to tell the court frankly what had happened, but to hid it altogether. His evidence-in-chief is therefore extremely meagre. He had to navigate and when confronted with his former statements, he explained that his present recollection is better and, helped by the prescription, and the telegrams, which he had not seen before. He had to admit that he had seen the prescriptions before, and the telegrams, as I said.

were in the custody of the contesting defendants since October 1921. He therefore made frantic efforts to get out of what he had said before, and doing so, went on, unblushingly, denying and saying whatever he thought would fit the present clear-cut case given by the Rani. He said naively that when he read the Rani's deposition in the papers, he wondered, and said to himself: Look at what she says and what I said? I proceed now to examine the evidence, adding only and their fact that in the diary of Satya Babu occurs at pages in which he entered certain facts, of facts they are, as under the dates 7th, 8th and 9th and 10th May. He said he opened the diary on about the 19th, or 20th May, but put down facts touching the death and illness of the Kumar, as he wanted to do it from the very beginning though in point of fact he began from the 7th May.

6TH MAY.

3 A.M. to 6 A.M.

The illness began and it was fever and colic. (Rani, Satya, Ashu doctor, Birendra).

I was present when the Kumar's pain of biliary colic began. This I distinctly remember. Satya Babu, and I and everybody else, was present says Dr. Ashu, Satya Babu adds he had to sit up. The pain was very acute he rolled in pain he says, to explain why the Kumar was removed from his bedroom on the 7th and lay on a bed spread on the floor in the next room where he died.

MORNING

Col. Calvert came and prescribed a medicine.

At this time the kumar was well, according to the Rani.

He was well till mid-day, she says.

Satya Babu is somewhat vague, but he does not mention pain and mentions little or no fever when Dr. Calvert came.

Ashu doctor does not say anything very definite touching this time, except that the prescription now made was suitable for biliary colic and fever.

Fever and pain between 10 and 4 p.m. after Calvert had left.

AFTERNOON

Biliary colic according to all but Dr. Calvert not called. Satya Babu adds fever also : and adds fever and colic at night. ~~Nobody~~ says that when Col. Calvert came, the ~~Kumar~~ was in biliary colic. They have to keep the morning from the colic for look at the prescriptions and the telegrams on this day :

TELEGRAMS:

Ex. 261(a) 10 A.M. Last night Kumar had fever below 99, no fever now kindly wire health.

MUKUNDA

Ex. 223. 6-45 P.M. Kumar attacked fever yesterday with severe stomach pain, Civil Surgeon attending.

CABRAL

Ex. 224. 8-55 Fever abdominal pain lasted two hours. Now remission. No anxiety no fear of recurring.

MUKUNDA

(The first word reads like "lever" and the last word like recruiting)—The 10 A.M. telegram does not mention pain. Even the 6-45 telegram does not mention any pain on the 6th, till this telegram was despatched, but speaks of

"stomach-pain" yesterday i.e., the 5th though the morning telegram had mentioned only fever, below 99 on the night of the 5th Satya Babu admits that Bengalees refer to dusk to dawn as night. In any case there is no colic on the 6th morning and till 6-45 P.M. The witnesses therefore keep the morning when Dr. Calvert came, free of colic and fever; and it was free from either not on their testimony alone, but from the telegrams. Now when Dr. Calvert came, he made the following prescription:—

For Kumar of Bhowal

Re

Spt amon aromat
sodii bicarb
Tinct card. co
Spt chloroform
aqua cinamon
one mark every two hours

Re

Lint opii
For external application

J.T.O.

Col. Calvert had been shown this prescription before he came to depose in London before the Commissioner. It was shown to him during his cross-examination also. In his examination-in-chief, he was shown the prescriptions, but said that Mr. Hunter had shown these to him before he came to depose, and that he "recognised them as prescriptions which I was in the habit of giving for stomach troubles". In cross-examination he was shown these, and as to this particular prescription Ex. 51 he says:—the Spirit amonia prescription—that "it is a carminative used in dyspepsia" and as to the Lint opii he says:

"It will suit local pain of any kind. I agree superficial pain." He agreed that the pain of biliary colic is

spasmodic as Dr. Macgilchrist had said. He was asked whether there was any authority for using it in biliary colic. He said he could not say : no question of what treatment was necessary but what he would accept. His evidence is that the Kumar would not accept injection, so this was the next best thing—the substitute. He says also when he was asked how the prescription fitted biliary colic that these including this first one—Ex. 51 of the 6th was suitable for the interval : He makes the time when he made this prescription and “interval”, consistently with his notion 14 days illness negatived by the admitted facts that he had seen no pain before the 6th : and he does not perceive the contradiction when he says that the Spirit Amonia prescription was for an interval and the Lint Opii prescribed at the same time was for the colic that was on and required injection and in lieu of that, this was this substitute.

It is perfectly clear that these two prescriptions on Ex. 51 had nothing to do with biliary colic at all. Dr. Denhamwhite examined for the defdts. says that the first is a commoner garden medicine. Dr. Macgilchrist says that it is a medicine for simple indigestion. Particularly flatulence. He would not give it in biliary colic : and as to the Lint Opii it is useless to biliary colic, as external application of opium leads to none of its active principles being absorbed. Dr. Bradley calls it a mild prescription for indigestion. What we call a carminative mixture for flatulence—a stock medicine for flatulence—the kind kept in office. That is to say what Dr. Denhamwhite for the defdts. calls commoner garden medicine. Major Thomas for the defdts. says that the first prescription the spirit amonia is an alkaline carminative mixture, and suitable for dyspepsia of any kind, including flatulent dyspepsia in

intervals of biliary colic, and that the Lint Opii is an external application for pain of any kind, anywhere, that is to say, these do not indicate, but do not exclude biliary colic. It is excluded by the admitted fact that there was no colic at the time Dr. Calvert saw him on the 6th by his implied admission that it was an "interval", and by the fact that the telegrams mention no pain even up to 6-45 P.M. or thereabouts on the 6th but mentions it after that hour as a two hours pain which Dr. Calvert did not see which no doctor was called to treat, though, if it were the pain of biliary colic, it was two hours of agony, I have grave doubt therefore whether this pain was a fact, but this is clear at all events that Dr. Calvert saw no biliary colic even on the 6th, and the Lint Opii must have been for some other pain, some superfluous pain, and looking to the first prescription for the stomach on the same piece of paper, it was it seems for the stomach. Wherever it was, it was not biliary colic, or Dr. Calvert will not call it an interval. Even the doctors called by the defdts. do not see in this biliary colic which admittedly did not exist at the moment it was prescribed.

6TH NIGHT.

It was a good night, for the telegram on the 7th despatched at 7-10 A.M. says Ex. 282(a). ..

Kumar had good-sleep last night, no fever no pain.

Mukunda.

In his diary Satya Babu entered under the 7th May; "Ramendra's illness continues, pains in stomach with slight fever. No sleep last night, wired home for fruits".

It is a false entry, looking to the telegram that the Kumar had good sleep on the night of the 6th. Satya Babu therefore says that the entry might mean that he,

Satya Babu, had no sleep that night, as though the thing is not quite obvious in the context, and as though his own sleep was an important matter, if he were writing the diary in retrospect, some 15 days after the event.

7TH MAY

No telegram sent this day as to the condition. There is no prescription by any doctor on this day except one by Dr. Ashutosh, and this one he tried to hide in the former cases in which he deposed, and which he now tries to disclaim.

The prescription is this :—

For Kumar R. N. Roy Bahadur
of Bhowal.

Re

Quinine sulph	...	...	gr.VI
Aloin	...	...	gr. $\frac{1}{2}$
Ex. Nux vomica	...	...	gr. $\frac{1}{3}$
Enonymin	...	...	gr. I
Acid Arsenius	...	...	gr. $\frac{1}{100}$
Ext-gent .	...	...	qrs.
Impt Pill (Silver)			

I.T.D.S. P.C.S.D.A.T. Das Gupta.

The last words mean 25 pills, and the direction, "one three times a day after meal."

This prescription, according to Dr. Macgilchrist, contains quinine, arsenic, strychnine in the nux vomica, and two drastic purgatives, aloin and enonymin. As to this he says-

It could be given as general tonic in chronic malaria doses within therapeutic limits, but the doses largish for a tonic—a tonic should not purge. Half a grain of aloin is excessive, even if there were not enonymin also, and

that one grain. The quantities are within official limits but these are based on safety, rather than on therapeutic action. The medicine, if taken as directed, three times a day will purge. Col. Macgilchrist thinks that this prescription is an opposite idea to the prescription of the 6th.

The later is sedative to the stomach, and this Arsenic prescription of the 7th would irritate it, quinine and arsenic will both irritate the stomach. One would not give it in biliary colic or in gastric irritation and flatulence.

Major Thomas says as to this prescription :

Looking to quinine, there might have been suspected malaria. Aloin and enonymin are purgatives, and I should guess the patient was constipated and needed a purgative.

Nux vomica and arsenic are tonics.

Dose of arsenic well within range.

Pills taken according to directions will not cause the symptoms of arsenical poisoning, nor if the Kumar had "colic pain or had an irritated stomach on the 5th and 6th" (these two dates were in the question).

Three of these trussed up in a solution will not produce arsenical solution.

12 of these so given will not produce such symptoms, as it will be vomited out."

All this in examination-in-chief in answer to the evidence of Dr. Macgilchrist who said only to illustrate the action of the drugs, that 12 of these trussed up in a solution, will mean 148 grains of quinine, 6 grains of aloin, 1/5th grain of strychnine ($\frac{1}{4}$ to $\frac{1}{2}$ gr. is fatal) 12 grains of enonymin, about 1/8th grain of arsenic, the fatal dose being 2 grains.

There is thus no difference between Dr. Macgilchrist and Major Thomas, and perhaps the former would agree

with Major Thomas when he says, "It might have been purely empirically given thinking if there was malaria it might be treated."

Col. Denham-White for the defdts. says;

"What is this prescription for?" (Shown Ex. 51 (a).

A.—I presume the doctor had in his mind a case of chronic malaria, complicated by constipation or vice versa. Quinine and arsenic are common remedies for chronic malaria, and aloin and enonymin are purgatives.

Q.—Doses normal?

A.—They are within prescribed pharmaceutical limits.

Then he adds that no human being could be induced to swallow 12 of these pills, but does not say that the effect would be different from what Dr. Macgilchrist had said, if he could be induced to do so; and then he is asked :

Q.—If a lethal dose of nux vomica is given what would be the symptoms?

A.—He will have the symptoms of strychnine poisoning.

These, he says, will appear in half an hour, or three-quarter of an hour. If a poisoning dose of Arsenius acid is given the symptoms, he says, will appear within half or three quarters of an hour. On this point Col. Macgilchrist had said: that the time will depend upon the degree of solubility, and whether the stomach is empty or filled with food will be another factor. Both parties rely upon Lyons' Jurisprudence as an authority, and in this book occurs the passage :

"The time elapsing between the taking of the poison, and the appearance of the symptoms varies according as to whether the arsenic taken in more or less soluble form, and whether the stomach at the time contains food or empty (Lyon's Med. Jurisprudence, 9th Ed. page 488).

There is thus no difference between the doctors as to this prescription that it will suit chronic malaria, and will purge, and will irritate the stomach. Nobody says that it is a medicine for biliary colic, not even Dr. Ashu who says that it will not suit in biliary colic.

I was rather weary of a trite observation that was being made in the case that the doctors who treated Kumar knew best what would suit him, (though every body is disclaiming Ex. 51 (a) and of the questions put on the footing as though it is anybody's case that if arsenic had got into the Kumar on the 7th and led to the symptoms, it must have come from this source. Dr. Thomas admits what is obvious that if any one were minded to poison anybody with arsenic, he would make, or get a prescription that might serve as a cloak, and capable of explaining the symptoms which includes diarrhoea, and blood in stools, and arsenic in stools. I have not looked at the evidence going to show alternative or better prescriptions, nor is this a murder or attempted murder trial. I am investigating the matter just to find out whether the Kumar had died, or been taken for dead and carried to the burning ground, and whether true account as to the time of his death is being given or whether the evidence points to dusk or a little after dusk as the time of death."

Now I turn to the condition of the 2nd Kumar on the 7th and to this prescription.

Dr. Ashu, as I said before, deposed at the end of 1921 before Mr. S. P. Ghosh Deputy Magistrate in the Defamation case, and again before Mr. B. M. Ghosh in the same case. He deposed also in the Sreepur case. Before Mr. S. P. Ghosh he deposed in December 1921 and the examination went on up to a day in January 1922. Before Mr. B. M. Ghosh he deposed between 6-12-22 to 15-1-23, and before the subordinate Judge in the Sreepur

case on the 12th to 15th December 1922. On each of these occasions the matter for inquiry was this illness and treatment and death of the Kumar at Darjeeling and before the Subordinate Judge, the matter was probably directly in issue. In each of these cases he gave an account in examination in chief, as well as in cross-examination, of the whole course of the illness from the 6th to the 8th and the treatment. In none of these occasions he admitted that he had made any prescription. Speaking about the 7th May he said before Mr. S. P. Ghosh that on the 7th Col. Calvert came about 8 or 9 P.M. (the copy 8 or 9 A.M. but it is corrected by the context) found the Kumar in great pain of biliary colic wanted to inject but as the Kumar would not agree, he prescribed an internal medicine—Ex. 395". "I can not say who gave the medicine to the Kumar to swallow," he says. "Probably nurses and other men did that."

Before Mr. B. M. Ghosh he said :

"At Darjeeling I did not prescribe any medicine for the 2nd Kumar. He used to take medicine as prescribed by either Dr. Calvert or Nibaran Babu" (Ex. 460—the passage marked 466 (j)). In this case the prescription was shown to him. But his answer was the same, and he stated the matter very clearly a little later in the Sreepur case. He said :—

On the 6th May Dr. Calvert prescribed for fever and pain in the abdomen. I do not recollect what medicine was given for fever. I do not recollect whether on the 6th a medicine was given for dyspepsia. Dr. Calvert came once only on the 6th i.e. in the morning. On the 7th Dr. Calvert came, and I made no prescription. I do not recollect what prescription was made by Dr. Calvert on the 7th. No other doctor did attend on the 6th and the 7th" (Ex. 394(2)).

Then he was asked point-blank whether he had not made the prescription the arsenic prescription and this was shown or read out to him and his answer was :

“I did not make any prescription”.

The case then was that Col. Calvert came on the 7th and made this prescription and he is perfectly clear that Dr. Nibaran did not come that day. Before Mr. S. P. Ghosh he had said that Dr. Nibaran was treating him for two or three days, but when he was giving the account of the 7th and the colic on that day, he mentioned Dr. Calvert alone, and said he had prescribed to relieve that pain. And in the Sreepur case he repeated this, and said expressly that Dr. Nibaran had not come on that day at all. In this Sreepur case the point was at issue undoubtedly, and Dr. Ashu was deposing for the defdts. and was shown all the prescriptions now before me and still his answer was the same he had not made the prescription, but Dr. Calvert.

Now in London the defdts. did not put this prescription to Dr. Calvert. They could not; it will destroy biliary colic and the condolence letter and the affidavit of death. In cross-examination it was put to him, and he said that in the Kumar's condition he would not prescribe it. In short, he disclaimed it.

As it could not therefore be imputed to him, Mr. Chaudhuri opened his case by saying that this was a prescription—dictated by Dr. Nibaran on the 7th, and taken down by Dr. Ashu: and he had suggested to Dr. Macgilchrist that “the doctor or doctors” suspected malaria on that day. In his evidence-in-chief what Ashu doctor says on the point is this:—

Q. During Kumar's illness at Darjeeling did you yourself make any prescription?

A. No.

Q. Did you write a prescription?

A. I wrote one under the advice of doctors. I did not make the prescription. But I was asked to write it, and wrote it. Either Dr. Nibarn or Dr. Calvert asked me to write it.

He does not say a word about when it was prescribed, or why or in what condition or whether it was administered and if so, what was its effect.

It could not be imputed to Dr. Calvert, he repudiated it. It could not be imputed to Dr. Nibaran, the doctor in charge of the Victoria Hospital but a subordinate of Dr. Calvert because he had not come on the 7th that was the former testimony. One would suppose that meant an end of the matter and it leaves Ashu doctor the author of the prescription as he purports to be, he admittedly wrote and signed it. It is supposed however that if it could not be ascribed to one of them, it could be ascribed to one or the other seeing that Dr. Nibaran is dead and a doctor who is dead could very well have done what no other doctor would do.

On the 7th there is no prescription by Dr. Calvert or Nibaran and this prescription stands out strange, and ominous. Everybody disclaims it. It is not only unsuitable to the condition on that day., but absolutely unrelated and incompatible, as the evidence will show.

The evidence as to the condition of the 2nd Kumar on the 7th is this:—

No telegram on this day except one saying that the Kumar had good sleep on the 6th night.

7 A. M. to 10 A. M. Neither fever nor pain. Both Dr. Calvert and Dr. Nibaran called.

10 A. M. to 4 P. M. About the same, according to Satya Babu. Fever begins, according to Ashu doctor.

4 P.M. to 9 P.M. Pain and fever, according to Satya Babu who says that after 9 P. M. it is difficult to say whether he was worse but he was not as well as in the morning.

Satya Babu says that either Calvert or Nibaran Babu came during the pain in the evening. Does not remember if they prescribed.

Dr. Ashutosh's account of this day is this :—

7 to 10 A.M.—The Kumar was well.

10 to 2 P. M.—Fever, but he does not remember.

2 to 4 P.M.—May be fever, but not sure.

Dusk	{	Pain of biliary colic occurred before dusk;	
to		"at dusk.	
10 P.M.		I remember	Dont remember if

severe or slight or if there was fever.

I can almost see his mind, he is trying to get a footing for a prescription that fits fever, but misfits pain. Eventually he says :

The Kumar had biliary colic about dusk. I recall that after seeing the telegram. He was in such pain as was likely to need specific prescription. I needed a prescription probably. I remember the pain he had on that day. It was the pain of biliary colic. I remember he was lying in bed when the pain was on, that bed was in the bedroom next to the room in which he died. As he lay, he was suffering very great pain.

Then he says that in this pain no morphia was injected, as the Kumar refused it. No opium was administered in lieu thereof. At this point he had laid the arrival of Col. Calvert or Dr. Nibarn. Either dictated the prescription Ex. 51 (a) the arsenic prescription. He admits before me that it can not be given in biliary colic. He admits it can not be given in fever, if conic is on. He says it can

be given in malaria and constipation which was not the 2nd Kumar's condition. He had said before that the Kumar had hiarrhoea, mild diarrhoea on this day, and he had not spoken of malaria in his former depositions. Dr. Calvert is ruled out by his answer and by the nature of the thing. Dr. Nibaran being dead can not be supposed to have given this in colic, and had not come on that day at all, according to his former statement.

Two facts are therefore plain. Neither Calvert, nor Nibaran Babu had come on the 7th May or there will be a prescription over their signatures or any of which they were capable in the condition of this day. The Kumar was in pain let us call it biliary colic for the moment and that at night : and that he was in pain in his bedroom and had not yet been removed to the next room in which he lay on the next day the 8th. The defdts. agreed that he was removed to the next room on the 7th, but led evidence to show that he was so removed on the 7th during day. It is the evidence of Bepin, the estate dufftry, and Bircndra, and Satya Babu.

He was in his bedroom even on the evening of the 7th after dusk. Ashu doctor sees him there on his bed in great pain, and the only prescription that came into existence or had come into existence then is the Arsenic prescription.

Did you try to relieve him by that?

A.—No, not by that.

There was nothing else. It could not relieve the pain, but could produce it if given in an overdose, according to Dr. Macgilchrist which nobody can deny, except by saying that nobody will take it.

It is perfectly clear that the Kumar was removed in pain from his bedroom to the next room during the course of the night. Shyama Das, the cousin of Satya, who was then a clerk in the Secretariate, and has since been dis-

missed for defalcation, and who, it will appear, is the backbone of the cremation in the morning., talks of seeing the Kumar on the 7th at about 6-30 P. M. and the Kumar told him that he was in great pain, that his bowels were not moving, and he could see him in great pain : and going to the house on the 8th the next day, he found him in "a different room". Satya Babu in his efforts to time the removal during day says that he was removed to the next room as he had been rolling in pain and this he was doing on the early hours of the 6th when the illness began. Confronted with the first telegram of the 6th which did not mention any such pain but only fever 99 degrees, he admitted that the pain that occasioned the removal was the pain of the 7th night, but he added that rolling on bed was an exaggeration.

Not one of the prescriptions indicate fever except this one Ex. 51 (a) made by Ashu doctor. The Kumar had no fever till the 7th. though this Dr. Ashu finds an indication of it in the carminative prescription of the 6th. No doctors on either side would say that, and it is obvious that it contains nothing for fever. It seems to me that the—prescription needs fever, and not vice versa, and with an eye to that Rai Saheb and Phani Babu and the minions of the defdts. were talking of malaria, and saying that the Kumar was subject to malaria. I do not believe a word of this evidence. Mr. Choudhury pointed out to me a letter of the Bara Rani dated 6-2-09 in which she says.

“মেজঠাকুরপো ভাল আছেন, আবার গত রাত্রে তাঁহার জ্বর হইয়াছে।

She refers to her own husband—as women in this

“He refers to her own husband—as women in this country do not name their husbands even in letter, and as to the letters of the mother-in-law of October 1908 in which she had been told that the 2nd Kumar was having fever and would go to Calcutta for treatment; we know he

went for syphilis that was the only possible word for his real complaint—syphilis. I do not believe that the Kumar had malaria at all, as no prescription indicates it or even fever, except this Arsenic prescription. It seems to me that this needs fever, and not vice versa, and that led to the evidence. Even Dr. Ashutosh does not say that the Kumar had malaria, and he tried to treat it. He says he did not prescribe it at all, that he would not think of treating the Kumar he was then a youth, and had passed an ordinary medical school examination. Out of his mouth came the truth that it synchronised with the pain on the night of the 7th for which it was no cure, which will not occur to any one as a cure, and which did not occur to him as a cure, but still he made it.

The facts of this day are plain. No doctor had come. No telegrams sent, showing that the Kumar was well enough till dusk or without much change from the condition on the 6th admittedly he was well in the morning but the Rani was made to repeat, to save Dr. Calvert's evidence, that Dr. Calvert came on the morning of this day, and proposed to give an injection. If admittedly there was no pain, this proposal speaks for itself. Morphia is not a cure of biliary colic, but of pain, and is the lesser of the two evils. One no more injects morphia in anticipation of biliary colic as Satya Babu said that one chloroforms a person against a possible abscess and a possible operation, for there is no knowing in the case of biliary colic, whether the stone will form again or when.

It is plain on the defdts' own account that Dr. Calvert had not seen any pain on the morning of the 6th. He had not I find, come on the 7th at all. Even if he had, he had seen no colic. Before the 6th the Kumar was not ill at all, and the 14 days' illness was given up by the defdts. and replaced by glowing health. Up to the 7th Dr. Cal-

vert had not seen colic at all, and yet, he went on speaking the pain "off and off", and that he was watching the case from day to day, that on the first day he saw pain in the right shoulder, and prescribed for it, and talked of "intervals", and all that sort of thing, though all that he had seen was flatulence on "single-day" the 6th morning, and all that he had done was to make a single prescription on that day. He saw the Kumar again on the 8th May, and it has to be seen what happened on that fateful day.

8TH MAY

About the 8th May the defdts. have a clear cut case :
The 2nd Rani says in effect :

MORNING.

The Rani's account is this :

Dr. Calvert came, wanted to give an injection, but the Kumar would not agree. Kumar lay on the mattress spread on the floor next to his bed-room which the Rani says is not the front room but the 4th room i.e. next to the front room.

Nibaran Sen, doctor came first at 8 or 9 A.M. a little before or after Dr. Calvert. They came into the Kumar's room, and I stepped into the side room, and stood at the communicating door. Ashu doctor, and Satya Babu present, and probably Mukunda. The doctors were in the room some 10 minutes. Spoke to the patient. Then they went towards the sitting room.

She explained that the front room upstairs is the sitting room the one to which the sloping path I mentioned led. She means the room No. 5 of the sketch on the margin.

The Kumar she says lay on the room No. 4 and the room No. 3 was her bedroom. It will appear below that the room No. 4 was her bedroom, and the Kumar lay on

the front room, the room No. 5 and the object of making the room No. 5 a sitting room is to discredit a witness on the plaintiff's side who had said that he had seen the Kumar lying dead in the front room, about 7 P.M.

Leaving that aside now, the case is that the Kumar was well in the morning and the Rani says expressly he had no pain of biliary colic or if any kind then.

10 A.M. or 10-30 A.M. A little colic and vomiting.

12 to 2 P.M. or 2-30 P.M. Colic very much increases, Mucus and blood appears in stools passed stools 4 or 5 times in the bath room, and then in bed pan. When blood and mucus appeared, Dr. Calvert sent for, but could not be found.

Q.—Any other symptom besides blood and mucus in stools?

A.—No other except colic, restlessness, vomiting tendency vomits once or twice.

In cross-examination she says the stools were liquid, and thin, but not like water.

She admits the Kumar had diarrhoea.

2 or 2-30 P.M. Dr. Calvert came and began to press for injection. Kumar did not agree.

Between 4 P.M. to 6 P.M. Kumar agreed to injection. After this the pain grew less, but the Kumar grew feebler, and feebler, and more and more prostrate.

After the injection—she became definite about this in cross-examination—the nurses came. His body was beginning to get cold. The nurses began to rub a powder on his body, and she sat by the bed-side. Col. Calvert stayed on till about 8 P.M. when he went for dinner.

She adds that the injection was probably given twice, but I do not remember.

DUSK.

Her maternal uncle, Surya Narayan Babu came with a doctor, Dr. B. B. Sircar. They both came into the room and the doctor examined the Kumar, and was in the room for some 7 to 10 minutes and left. Surya Narayan left after about an hour and a half. Dr. Calvert and Dr. Nibaran did not come into the room when Dr. Sircar examined the patient. Both were in the house, when Dr. Sircar examined the Kumar his body was cold, but not ice-cold.

She denies that Dr. Sircar pronounced the Kumar dead before he had left.

MIDNIGHT.

Death in the presence of Dr. Calvert and Dr. Nibaran and Ashu doctor.

Dr. Calvert had returned after dinner and stayed on till after death.

From injection to death the case got progressively worse. She did not leave the room from the time of the injection till the body was removed the next morning, lay on the bed all night after death, weeping.

On the side of the plaintiff there is no witness who touches this day, until after death. One Ram Singh Subha, the Munsif of Mr. Warnickle who was the land lord of the Stepside, and who let the house to the Kumar after settling terms with Satya Babu and Mukunda—that is not disputed says that on this day he came home from the Lebong Races at about 4-30 P.M. and took his meal. He lived some 15 feet below the Stepside. Some 2 hours after he had taken his meal he heard women's cries at the Stepside, and went out to see what the matter was. It was then about 7 or 7-30 P.M. He found the servants downstairs talking, and heard the Kumar was dead. He

went upstairs, and found the Kumar lying dead covered with a sheet in the front room the room No. 5 and on the same room he found Dr. B. B. Sircar. Dr. Ashutosh, and the Sala Babu, meaning Satya Babu and one or two other inmates of the house. They sat quiet, and the witness did not speak to them, and came away after standing there 8 or 10 minutes. As he went past the rooms in the veranda both on his way to and from the front room, he could see through the glazed door the Rani in the 3rd room lying on an iron cot, and crying—crying very aloud. The room in which she was locked up from outside.

This witness was the first to introduce Dr. B. B. Sircar into the room at 7 or 7-30 P.M. When he was cross-examined it did not appear that the defdts. had any case about this Dr. B. B. Sircar at dusk, and the suggestion was that the witness was giving false evidence. The Dr. B. B. Sircar at dusk is now a common ground and will prove a fact of extreme importance, but Ram Singh Subha is still sought to be discredited by the case that the Kumar lay dead—died in the 4th room, and not in the 5th or front room.

Now look at the telegrams sent and the prescriptions made on this day :—

Ex. 225 7-20 A.M. Had fever slight pain yesterday now normal no anxiety.

Ex. 221 11-15 A.M. No fever slight pains vomiting tendency civil surgeon attending, no anxiety, coming giving rice water 1000 passage.

Ex. 222. 3-10 P.M. Kumar seriously ill frequent watery motion with blood come sharp.

The next telegram sent the news of death. This has not been produced. There is a question as to when it was sent and what it said as to the hour of death.

PRESCRIPTIONS

Ex. No.

Druggists'

For Kumar of Bhowal

Serial

51(e)

3439

Re

Mag Carb

Sodi bicarb

Bismuth Carb

pulv. Tragacanth Co aa 3i

Oil Cajiput m xii

Aqua Menth pip ad oz vi

T.D.S.

SD J.T.C.

51 (b)

3440

Re

3440/1.

Sodi Citrate 3i

Aqua sterilised ad 3vi

3i with milk as directed

Re

Glycerine pepsin 3ii

as directed.

Re

Pep powder fresh

Sd. N. C. Sen.

Re

Atropine Tab gr 1/100

Strychnin Tab gr 1/30

Digitalis Tab gr 1/100

Ether pure ½ oz

Morphia Tab gr 1/8

Sd. N. C. Sen.

Spt Ether	3iv
Spt amon aromat	3iv
Aqua camphor ad	ozviii
1/8th for a dose	I. T. S.

Re

Ext.. Opïi

Belladona

Saponis a a gr ½

Impt Pill send 6 such

T.D.S.

Sd/- J. T. C.

420.	Ex.	No.	Druggists'
			Serial

51 (d)

Lint Saponis 3ii

Sinapis Co ad 3ii

To rub all over the limbs with ginger powder.

Re

Belladona aa zii

To be applied over the stomach

Spongis Leline 12 x 12

Sd. N. C. Sen.

It will be noticed that the prescriptions bear a serial without gap in the druggists' shop and indicate some quick succession, unless Messrs. Smith Stanistreet and Co. did no business that day except dispensing these prescriptions for the defdts. spread these over the whole day, the last before dusk the powder was being rubbed over the body, according to the Rani, before dusk by the nurses, I would base no conclusion on the druggists serial as to the quickness of the succession, but only as to the sequence, as the defdts. themselves indicate this sequence in their evidence,

though Dr. Ashutosh or anybody would not fix the points of time. Ashutosh seems to know the least of all.

Looking to the sequence, the prescriptions indicate :—

1. Mag. Carb prescription—

Acidity : pain in the stomach : vomiting : diarrhoea and tenesmus—(Col. Calvert)

Do except diarrhoea and tenesmus. (Col. Macgilchrist).

Indigestion, perhaps a little use in tenesmus, useless in diarrhoea, a mild prescription indicating nothing very serious (Dr. Bradley). To treat dyspepsia as the Ex. 51 the 6th May prescription (Major-Thomas).

Dr. Ashutosh agrees with Dr. Calvert, but can not say which drug is for tenesmus which means constant urge to stool.

2. Sodi citrate and glycerol pepsin prescriptions.

To aid digestion (Col. Calvert, Col. Macgilchrist), (Major Thomas and Dr. Bradley).

Major Thomas adds that it is quite suitable for the interval of biliary colic.

(b) Pep powder fresh—Should go with above to aid digestion. (Col. Macgilchrist. Nobody differs).

(c). The 6 drugs which Mr. Chaudhuri referred to as the armoury :

(On these there is only one account—that of Dr. Macgilchrist.

Atropine gr. 1/100 usually used with morphia for hypodermic injection.

Morphia—Injected to relieve pain from whatever cause, biliary colic included.

Strychnine—gr. 1/30 stimulates nervous system.

Digitalis—entirely heart stimulant.

Ether pure—For collapse, by hypodermic injection inhaled, will relieve convulsion and spasm.

This armoury is not a prescription, but merely mentions the dosage for hypodermic injection, and one can not find out the quantities supplied.

3 (a) Ether mixture :

For collapse—all the doctors, Major Thomas adding not necessarily severe collapse.

(h) Opium pills

A substitute for morphia hypodermicall
(Col. Calvert).

To check diarrhoea, tenesmus, the rectal condition.
(Col. Macgilchrist).

To control severe diarrhoea : if morphia hypodermically is refused, a logical substitute.

May or may not be given in diarrhoea : a substitute for morphia injection (Major Thomas).

4. (a) Ginger and mustard powder.

For cramps, such as you have to cholera (Col. Macgilchrist).

Not necessarily cramp. May be used to rub limbs in cholera—(Dr. Thomas).

4. (b). Belladonna liniment

For pain in the stomach, as the direction mentions stomach (Col. Macgilchrist). For relieving pain in the stomach, as the document says : any local pain (Col. Calvert). If the case were biliary colic, might have been rubbed on the abdomen (Major Thomas).

Abdomen be it noted, is not equivalent to stomach—Stomach and the liver and the gall-bladder are among its contents, and the pain of biliary colic shoots to the right shoulder.

It would seem to indicate four stages, but two prescriptions supposing they were written during the course of

the same visit by the two doctors will mean two serial number in the druggists.

Col. Denham-white adds nothing to the above account except saying that the opium pills—the 3(b) above might be given to relieve straining at stool which is tenesmus and would be a substitute, for morphia injection : and as to the ginger powder prescription for rubbing, it would reduce cramp and increase the warmth of the limbs exactly as Col. Macgilchrist says. Asked whether cramps could occur in biliary colic he says yes, points to a passage in page 291 Col. 2 in Sajous' Analytic Cyclopedia of Practical Medicine Vol. III. 1915 Ed. but admitted that the cases there mentioned were cases after operation, though it was rather obscure he says. I saw no obscurity.

The prescriptions therefore indicate the following sequence.

According to Major Thomas for the defdts:

1. Simple dyspepsia.
2. Collapse
3. Opium pills for biliary colic as a substitute for injection, and rectal condition.
4. Cramp and pain in the abdomen may be.....

According to Dr. Macgilchrist and Dr. Bradley:

1. Simple dyspepsia.
2. Collapse
3. Opium pills for profuse diarrhoea.
4. Cramp and pain in the stomach.

Major Thomas did not mention cramp but the defdts. suggested cramp as a result of biliary colic, and Major Thomas admitted this, as indicated by ginger powder, though he would not use it.

Consistently with the above the 2nd Rani says :

Well in the morning—till 10 A.M.

Vomitting tendency and a little pain at about 10 A.M.

Great pain and blood stool at 12 A.M. Dr. Nibaran came.

Col. Calvert came at 2 P.M. and began to persuade the Kumar for an injection

injection—at 4 P.M. to 6 P.M. Pain ceased.

Nurses and rubbing with powder before dusk.

Dusk—Dr. B. B. Sircar.

Midnight—Death.

On her account, from dusk to death is blank so far as treatment goes. There is no question that the prescriptions before me were all the prescriptions on that day, and the telegrams all the telegrams save and except the telegram of death.

Satya Babu, and Ashu doctor, and Birendra, and Bepin Khansamah, have come to depose to this case the case put into the mouth of the Rani. Consider the following facts; (1) Dr. Calvert came in the morning when the Kumar was well and proposed to give an injection. There were earnest solicitations and exhortations in this behalf—says the condolence letter—Asked why this proposal was made if he was well and without pain. Satya Babu sees the absurdity, and says that there was a little pain, slight pain, but the injection was going to be the precautionary measure, which is an absurdity Col. Calvert was proposing this, although he had seen no pain at any time before that day, and ended by making a mild prescription for dyspepsia the first prescription of the day. o

Now a man suffering from simple dyspepsia does not collapse.

When did he collapse, and what had happened before?

Dr. Ashutosh, deposing 12 years ago, in a case in which this point was under inquiry, and which was really

by the Estate, and in which he was examined by Rai Bahadur S. C. Ghosh said :—

On the date of his death he got a severe diarrhoea in the morning. He passed terribly bloody stools. He was suffering from diarrhoea for two days before this (the passage was put to him)

This is examination-in-chief. In cross-examination he says; after describing that the kumar had biliary colic on the night of the 7th and Dr. Calvert prescribed for it which I found false the prescription being his, he says, as to the 8th :

“The pain increased at about 2 or 3 A.M. at about 4 A.M. a man was sent to call Calvert. He came at 7 or 8 A.M. He wanted to inject. The Kumar declined to have that done. Dr. Calvert then came with Dr. Nibaran Chandra Sen. He came. Dr. Calvert engaged him for 24 hours’ duty. Dr. Calvert made some prescription in the morning I do not remember what prescription he had made. He came again at 2 P.M. but there was no improvement. He came again at about 8 P.M. Kumar was passing blood with stools at the time. There was no chemical examination of bloody stools. I do not know whether Dr. Calvert suggested chemical examination of blood stool. Dr. Calvert and Nibaran engaged 2 or 3 nurses who gave medicines to the Kumar to swallow. Bloody stools commenced from 8 A.M. in the morning of the day of his death. He passed 10 or 12 such stools. He passed such blood. I can not say by guess how much blood he passed. The blood he passed was red coloured.

This before Mr. S. P. Ghosh in the defamation case on 27. 1. 22.

In the Sreepur case he says the same thing—pain at 4 or 5 A.M. Col. Calvert of 7 or 8 A.M. and pressing for

injection : and the blood stools he shifted to 10 or 11 A.M. and he added, in fighting these blood stools. "Dr. Calvert sent a prescription" (Ex. 394 (2) and Ex. 394 (8) and he had said : "In the morning of the 8th the 2nd Kumar was in great pain he was rolling in pain".

And as to this day he had said :

"After 2 P.M. the pulse commenced to become bad" (Ex. 394/11). He collapsed at 4 or 5 P.M.

On his former testimony therefore :

Pain commenced at 2 or 3 or 4 A.M. So bad that Col. Calvert had to be sent for at 4 A.M. He came at 7 or 8 A.M. and wanted to inject. Rolling in pain in the morning, bloody stools commenced at 8 or 9 A.M.—They were terribly bloody stools. Col. Calvert sent a medicine to fight blood stools. His pulse began to be bad at 2 P.M. and he collapsed at 4 or 5 P.M. He had said also what sort of collapse commenced at 4 or 5 P.M. "Collapse commenced from about 4 or 5 P.M. There was sinking of pulse. Pulse could not be felt" (Ex. 395).

And he said, not before Mr. S. P. Ghosh, but later in the Sreepur case that Dr. Calvert gave an injection at night.

When these passages were put to Dr. Ashutosh he has one answer to make. He must have made those statements; they were within his recollection then, they are not within his recollection now, that when he made them he believed them true, but they are not true; that his recollection had improved after seeing the prescriptions and the telegrams though he admits he was shown the prescriptions in the defamation case, and in the Sreepur case, as the depositions themselves show. As to the telegrams, the defdts. had already secured them from Bara Rani in October 1921. It is useless to go into each of his statements and find out how much of this is pretence. The whole of it is so. He him-

self says that when he read the deposition of the Rani he wondered. Look at what she says and what I had said.

I am not going to rely upon his former testimony as substantive evidence except so far as he admits it correct but it is enough to discredit him altogether. It is only necessary to read his evidence to do that; to this witness untruth comes more naturally than truth. He seems to revel in it, though it was a travesty even of falsehood.

Now so much as could be extracted from his present testimony, the Kumar was removed on the night of the 7th to the adjoining room, and he had been in great pain in bed-room before. During that pain the Ex. 51 (a) was made, not by Dr. Calvert or by Dr. Nibaran but by him.

On the next morning we find him in pain even on the present evidence of Ashu Babu. He does not admit now that it increased at 3 or 4 A.M. as he had said before, though the sending for Dr. Calvert at that hour was intended to fix the time, but he admits that on the 8th morning, the Kumar was not well, that Dr. Calvert had to be called, and there was need for him. That is the little concession that Satya Babu and Ashu doctor had to make to reduce the absurdity of no pain coupled with "earnest solicitations of his friends" to obtain consent to an injection. There is no admission now that there was blood stool in the morning, as the plaintiff said but blood-stools that is diarrhoea with blood had to be admitted in view of the telegram sent at 3-10 P.M. (Standard time). It said; "Kumar seriously ill. Frequent watery motion with blood. Come sharp" it is a sort of thing that one writes when a person is dying. Not a word about biliary colic, though this is said to have been his old malady known to the family and even to strangers, such as Atul Babu. Not a single telegram during the whole course of the illness had mentioned biliary colic. Now this "watery motion with

blood" what was its nature? He was passing "frequent watery motion with blood"? Dr. Ashutosh described them as "Terribly bloody stools". His present recollection would not permit him to use that expression as telegrams and prescriptions had freshed it but he admits that the stools were liquid and they had blood in them and the Kumar passed a dozen or more of them. The Rani says the stools were patla (thin) but not like water. Rani adds a little mucus for a reason which will appear. Ashu Babu of course now says the same thing—liquid stools but not watery much less rice watery but there was blood in it, and it is agreed on all hands that the blood was red. He and Satya Babu speak a lot of nonsense to show that watery motion means motions not watery but liquid and strained motions, but the expression was used by Mukunda, a failed B.A. and a Bengalee uses the expression in the sense of stools like water as even Satya Babu had to admit : and as to the quantity of blood, nobody says that it was small in quantity, or only streaking the stools, though nobody would now use the word terrible. Dr. Ashu had used that word before, and uses that in effect, when he says that he adheres to his opinion which he expressed in the former case before Mr. S. P. Ghosh that if he were to treat the blood now he would treat it with calciumchloride or lactate or adrenalin. He said this when he called it terrible, and he adheres to it, and these medicines are medicines for haemorrhage, for severe bleeding. Hall-White cited before me as an authority says, calciumchloride or lactate is largely given to increase coagulation when bleeding is severe (Hall-White's *Materia Medica* 18th Ed. page 53). See also page 61 for adrenalin which is a suprarenal extract given to constrict arterioles. The outstanding symptom of the day was this haemorrhage. In 1917 Satyabhama Debi writing to the Moharajah of Burdwan about the rumour—

long before the arrival of the plaintiff—had mentioned this diarrhoea with blood as the thing of which the 2nd Kumar had died at Darjeeling. The defdts. rely upon a notice of death appearing in the papers in which this is mentioned as the cause of death. I do not rely upon these two as establishing the thing but the evidence before me and the telegram establish what is hardly disputed that the Kumar passed in quick succession. Rani says every half an hour so—stools with blood and when he was doing, so he was in pain, though she calls it biliary colic.

These bloody stools, with pain, I shall presently find what the pain was—were followed by collapse an admitted fact—I have no doubt whatever that this collapse occurred at midday.

If so, the bloodstools must have begun before, and in the morning, as Dr. Ashu had said before.

I find that the collapse occurred at about 12 on these grounds : Dr. Nibaran came at about 12 O'clock and prescribed the armourey the atrophine and the rest pointing to collapse. Nobody disputes this opinion of Dr. Macgilchrist that the armourey points to collapse and Mr. Chaudhuri asked this witness :

Q.—It would be right to get these for an emergency?

A.—To provide against or to treat a collapse?

A.—Yes, some of them.

It is plain that at 12 or so when this armourey was prescribed Dr. Nibaran was not there alone, and provided against a possible emergency but he as well as Dr. Calvert was there and was confronted with an emergency. The man was bleeding—as admittedly he was at this moment—and was in a collapse. Dr. Calvert did the prescription—the other mixture for the collapse and the opium pills for the diarrhoea while Dr. Nibaran wrote out the sodi citrate

etc., for aiding digestion of milk, as the prescription indicates and put down the armoury—the dosage of a lot of drugs which is not a prescription at all. Ex. 51(b) and 51(c) must therefore have been sent to the druggists, at the same time and they bore consecutive numbers. Dr. Ashu had said before that Dr. Calvert and Dr. Nibaran came together. He does not admit that now, but supports the Rani, and says that Nibaran came at about 12 and Dr. Calvert came at 2 P.M. The defdts. would therefore place the opium pills at about 2 P.M. and call it the substitute for morphia in biliary colic. The moment you say that you have to admit that Dr. Nibaran came at 12 made some food prescription and put down the armoury, and sat folding his hands while the man was bleeding to death before his eyes and you will have to admit that Dr. Calvert came, and did not treat diarrhoea, and bleeding at all but gave a substitute for morphia for biliary colic. Either the opium pills were for diarrhoea or there was, no treatment of diarrhoea at all. What I called the food prescriptions, sodi-citrate means nothing haemorrhage which was admittedly taking place when Dr. Nibaran came, introduction of fluids in the shape of milk, tea, coffee is the recognised treatment (Thomas Miles and Wilkie's Surgery Vol. 1, page 279, 8th Ed.)

That Dr. Calvert and Dr. Nibaran had come about 12 P.M. as said by Dr. Ashutosh before he had added that it was Dr. Calvert who brought him, and engaged him for 24 hours duty, pointing to the condition he found him in, need not rest upon the former testimony now falsely withdrawn but upon the armoury at 12 A.M., upon the practical impossibility that no prescription was made till 2 P.M. to stop the haemorrhage, and upon the account that Dr. Calvert gives of the day. He was shown the first prescription of the day, the Mag Carb one—and asked :—

If a patient is suffering from watery motion with blood is there any medicine in this prescription for stopping the blood?

A.—It is not usual for patients to pass watery stools with blood, and had he done so, the treatment would have been adopted if possible to the cause of that condition. The Kumar passed motions *consisting of blood stained mucus with a little free blood.*

Q.—When?

A.—In the morning or in the middle of the day.

Q.—Did he pass many such stools?

A.—I was told about a dozen.

Ashu doctor says that he did show to Dr. Calvert the stools that had been passed before his arrival. Col. Calvert says that the little free blood he saw was "fresh and red in colour."

Dr. Calvert's recollection of the day begins with this call, and seeing the stools consisting of mucus and a little free blood—this mucus and blood stool, as I may shortly call it. He does not admit diarrhoea now an admitted fact; and his evidence further is that this blood and mucus stool was the effect of biliary colic. He obviously recollects the last of the stools when all the fluid had passed out, leaving only the bleeding and the mucus.

I find that the blood stools had occurred in the morning and the collapse occurred at about 12 when the armoury was brought in. It is confirmed by the Col. Calvert's affidavit of death where he says; Just two months after the 8th May 1909.

"The attack became acute on the morning of the 8th and he died the same evening."

It follows that the case that the Kumar was well in the morning coupled with insistence on the part of Col.

Calvert to give an injection is false, the telegram sent that morning that he had fever and slight pain on the 7th is untrue on the account now given of the 7th, and that he was well on this morning is false, looking to the collapse and the armoury at mid-day. The mild prescription of the morning was sent to fight blood-stools according to Ashu Babu's former testimony, for there is no other prescription to which that could apply. Ashu Babu does not admit that now, but he goes so far as to say that if Dr. Calvert had seen blood stools in the morning, he could well prescribe it and Dr. Calvert's memory does not go to this prescription as connected with an actual visit in the morning before he had seen the bloodstools kept for him at midday.

I find that this diarrhoea with blood stool was the real complaint of the day. There is no end of things that exclude biliary colic. I mention only some of them. (a) No telegram mentions biliary colic, not even Ashu's (2) Biliary colic does not cause diarrhoea, nor blood in stools. Its concomitant is constipation. Dr. Calvert admits that, and not having seen diarrhoea he says that the blood mucus stool he had seen was the effect of this cause—the impaction of the stone in the cystic duct. He says he had seen cases in which the postmortem showed blood in the intestines but he had to admit that any blood coming down the duct, and through the intestines comes out black and tarry. The reason as explained by Col. Macgilchrist, is that supposing the stones ulcerate through the ducts, and there is bleeding, and this blood gets into duodenum, and thence into the small and the large intestines and passes through 25 feet of these, out of the rectum; it will be digested during the process by the secretions, so that it will come out tarry. Fresh red blood means congestion of the lower bowels, i.e., bleeding near the rectum.

Nothing higher up will come out red. Nobody could dispute that but Major Thomas who admits he had not been told about diarrhoea, but had taken as his fact that the stools passed on that day *consisted of mucus and a little blood*—his opinion was taken in the examination in chief on that footing—indulged, I must say, in a little speculation. He says that gallstone means inflammation of gall-bladder, which means pus, and this pus may travel down the intestines set up there an inflammatory condition, or awaken dysenteric ulcer, and lead to blood-mucus-stool. His opinion was taken in this fashion.

Q.—Would Col. Calvert's answer that the Kumar passed motions consisting of blood-stained mucus with a little fresh blood indicate that Kumar was suffering from Arsenical poisoning?

A.—No, quite the reverse.

In cross examination he was asked—

Q.—Had you any information that the Kumar had diarrhoea?

A.—No.

Q.—Are you aware that the Kumar actually vomitted and purged?

A.—I think my idea is that he had a tendency to vomit, but not vomiting. As regards purging my impression that he was supposed to be passing stools containing mucus and a little blood. Some people would call that purging. I would not call it purging.

The opinion goes for nothing. Dysentery is ruled out by diarrhoea.

Col. Denham-White for the defdts. was similarly asked whether blood-mucus stools would indicate arsenical poisoning. He says no. Every body would say no. It is difficult to understand what is gained by sticking to Dr. Calvert's fact, blood-mucus stool after admitting

“watery motion” with blood and diarrhoea expressly. The position, so far as the experts go, is only one opinion on the admitted symptoms; diarrhoea with fresh red blood cannot be caused by biliary colic.

(c) The treatment was not of biliary colic at all, except on the theory that the Kumar had refused an injection in the agony of biliary colic; and even on that theory, there is no substitute, except the opium pills, and if those go to that, none go to the bleeding which was terrible; and though, on the present case, an injection was given at last and the pain ceased, he does not recover. Col. Calvert had said the system had got too severe a shock—and what is more, there remains despite morphia, the pain in the stomach for the last prescription is beladonna liniment for “application on the stomach.” This last is, in my opinion, the clue to the whole thing this pain in the stomach; and it is very reassuring to find that Dr. Denham-White gives an opinion on the symptoms which confirms what Dr. Macgilchrist had said. He, Col. Denham White for the defdts., says:—

“From prescriptions and Col. Calvert’s evidence it is my opinion that the illness was dysentery but the treatment was not of that”.

Again, “Reading Col. Calvert’s evidence I think his treatment was directed towards enteritis.”

Major Thomas has told us what enteritis is. Enteritis is inflammation of the mucus membrane of the intestine. It is caused by an irritant. The irritant may be organic or inorganic. Arsenic is a chemical irritant.”

Col. Denham White had said :

“The symptoms of arsenical poisoning are the symptoms of acute enteritis”.

(d) The family did not hear of biliary colic as the cause of death. The telegrams do not mention it. The

obituary notice in the newspaper which defdts. put in mentions blood stools. "Birendra (D.W. 290) in his previous deposition in the Sreepur case gave an account of the illness and death and said that on the day of death Dr. Calvert was asked what the disease was and he, Birendra said, speaking about this day : "Dr. Calvert was asked the name of the illness. Dr. Calvert said that there was some clotted blood in the stomach and therefore the pain took place." (Ex. 350) Dr. Calvert of course denied that he had said this, and it could not be that he had said this, but it shows that nobody had heard of biliary colic during the illness. Satya Babu and Ashu Babu were therefore somewhat lavish in the use of the expression "pete betha" or stomach pain and Dr. Ashu had been speaking of liver pain, so that it might be thought that the word was not familiar to them, not even to Ashu, and that is why it had not gone into the telegrams; but Satya Babu for the defdt. had been giving evidence to show that the Kumar had biliary as an old complaint, and that he went to Calcutta not only for the treatment of syphilis, but for biliary colic also. Dr. Ashu began by saying that, and admitted that in Calcutta he did not tell the doctor about biliary colic, and that no treatment of it took place, and then he altered that and said that there was another doctor to whom he told it. All this is false. Biliary colic appeared for the first time in the condolence letter composed by Dr. Calvert on the 10th, and even there it is colic. He had not seen the 2nd Kumar for a single day except the 6th before the 8th, and even on that day he had not seen him in pain; and what he had seen on the 8th is now known—blood stools and collapse, and yet when he sat down to write the gratuitous condolence letter in which he speaks of biliary colic, and his patients having it off and on and the exhortations of friends, and refusal to take an

injection, and in his later affidavit he suggests 14 days treatment, and this led him to say that he had been watching the biliary colic from day to day, although he had not seen it for a day on the defdt's. own account until the 7th when in the middle of the pain he is said to have prescribed arsenic, and when I find he was not present. It is perfectly clear that somebody wanted this document from him—the condolence letter to hide the real cause of the blood-stools, and the collapse, and the apparent death, and Dr. Calvert who, as he admits, had never seen a case of arsenical poisoning, had thought of, or accepted the suggestion of biliary colic as an explanation of what had occurred, a sudden and unexpected death on his own account, and put in whatever was wanted, just as he put in 14 days' illness, and the age in the affidavit of July 1909. Nobody not even Satya Babu or Ashu Babu explains how or why this letter was written, to whom it was handed over. Dr. Calvert does not say he did, much less that he got a reply and it was Satya Babu who sent a copy of it to the Board of Revenue in June 1921 after the appearance of the plff. The case made as to this is that the letter was discovered in May 1921, after the declaration of identity as Mr. Needham, in view of the claim of the plff. made some 20 days before, asked that evidence of death should be looked for, and this letter was discovered there, and a copy of it sent to the 2nd Rani. I do not believe this account. It was sent to Jaidebpur to be discovered there and sent to the Collector, as it was.

I find that the biliary colic is a fiction, that it could not explain the fresh red blood in the stools, and the treatment was not of biliary colic at all, as Col. Macgilchrist and Col. Denhamwhite agree and as Major Thomas virtually agrees—when he says that the opium pills, the only thing.

arguable as a substitute for real treatment, might be given for diarrhoea, and if that is assigned to the colic, there would be no treatment of diarrhoea at all. Dr. Calvert saw this and said that the blood needed no treatment as there was no watery motion with blood at all but a little blood mucus stool which in itself was trivial. Eliminating biliary colic, what was the cause of the symptoms on the 8th? The admitted symptoms were: vomit in the morning, and watery motion with blood in quick succession, and restlessness; followed by collapse: and this followed by cramps and the thing that one sees up to the last is pain in the stomach which Dr. Ashu admits. The last application was on the stomach the belladonna ointment for application of the stomach. Cramps mean loss of fluid. Collapse means loss of blood, and intense pain, and over stimulation of the nerve-centres. Blood stools mean intense congestion of the lower bowels, as the blood was red. These are the symptoms of arsenical poisoning, according to Dr. Macgilchrist whose every other opinion stands uncontradicted, and this particular opinion is supported by Col. Denhamwhite who sees in these acute enteritis or inflammation of the intestines produced by an irritant. This irritant may be anything, including arsenic. In Lyons' Jurisprudence cited before me as an authority occurs a chapter on Metallic irritants. It is on page 479 (9th Ed. 1935). The passage is too long to be quoted, but the acute arsenical poisoning has been described there with its symptoms, and though no single symptom is constant, certain symptoms taken as a whole have been mentioned as the effects of vomiting; burning pain in the stomach; purging, at first of ordinary bowel contents, later, of foetid, faculent and blood-stained matters: and still later, thin watery turbid motions resembling the rice-water stool of cholera: tenesmus and

anal pain, and collapse, and cramps. The on set may occur in a few minutes, or may be delayed for hours. Death may take place in an hour but more usually 36 hours or so (Page 488). Dr. Macgilchrist is right when he said that the stools in arsenical poisoning resemble those of cholera and are distinguished by the presence of blood. In cholera the stools are more watery, the water of the blood passes out as if through a sieve, and the bowels are pale : while in the other, the water is inflammatory exudate, and the stomach above, and the rectum below, are velvet red. If the two doctors, one on either side agree that the symptoms of that date mean an irritant, it is enough for me to find that these were not due to a disease, but to an irritant that got into him. The evidence does not disclose any other irritant than arsenic one finds in the Arsenic prescription of the 7th made by Dr. Ashutosh and grave suspicion attaches to him for making the prescription at all, and then denying it, and trying by perjury to hide it and to fasten it upon another, and to explain the diarrhoea on the 8th as the result of biliary colic, or by previous diarrhoea, as he had done before, though this, he says, is false. He admitted, with great reluctance, and only in cross-examination that the Arsenic prescription was administered on the 7th night and that he had a medicine-box of his own whose contents did not include arsenic. He had to say, (*illegible*) to save biliary colic, that this medicine was given when the colic was on, but that is impossible, on all accounts, and as it could not relieve any sort of pain, but could, by an overdose, produce it. The giving of this medicine, even if there was no attempt to hide it, would be an extremely suspicious circumstance. But so long as the bare possibility that he gave this medicine

like a quack, and was frightened at the result remains, I can not find that he did it wilfully to cause death. I must find however, that the irritant was arsenic, as there was nothing else, and nothing else explains the symptoms that appeared the next morning. The point now is whether the 2nd Kumar died at midnight, or at a little after dusk. For the requirements of his case that is the vital issue, for if he had "died" at midnight, the whole story of his being out at about 9 p.m. for cremation becomes a talc. On this point there is the affidavit of Dr. Calvert that he died at 11-45 P.M. and his evidence that he was present at his death.

The 2nd Rani says that from 2 P.M. when Dr. Calvert came and the bloodstools were going on, she sat by the bed of the Kumar and never left him, until he died at midnight, and ever then she did not leave him, but lay on the bed till the body was removed the next morning. And the witnesses who speak to this day support her. She also says that Dr. Calvert was in the house from 2 P.M. to a little after death, except that he went out for dinner for a short period at about 8 A.M. It is difficult to believe that Dr. Calvert remained there so long, doing nothing, seeing that after dusk, there was no prescription, but it is said he sat in the "Sitting Room", next to the room in which the Kumar lay, on the floor, dying. Another thing she says, and everybody else says, is that she never thought that the Kumar would die.

Col. Calvert began by saying in his evidence-in-chief. As far as I remember, I was present at the time of death. Then his affidavit of death of the 7th July 1909 was shown to him. Seeing it, he said :

Q.—Were you satisfied that the life was extinct?

A.—Perfectly satisfied.

In cross-examination he said : "I remembered without seeing the certificate that he died at midnight". He had kept no notes or memo and insists that he was only a consultant, but he remembers it, 22 years after because he says, "I have a very good recollection because the death of Kumar made a great impression on me in that I thought it was an unnecessary death, and that had he agreed to the treatment, his death would not have occurred, he being a young man." He said this in answer to the question whether he had an independent recollection apart from his affidavit of July.

He admitted that he had been shown certain documents before he deposed; his prescriptions, the affidavit of death—this last he gave as his reason for recollecting the time of death, 'a statement of the case' whose contents have been left obscure and a letter, he had written to Mr. Lindsay in 1921. The affidavit of death had mentioned or suggested 14 days' illness, and death at 11-45 P.M. 14 days' illness is untrue—that is admitted on all hands though it misled Dr. Calvert into speaking of 'pain off and on', and 'watching the case from day to day' and 'refusing to take an injection' throughout his illness. It will have to be seen whether the "death at 11-45" has the same origin and the same truth as the 14 days' illness.

On the 3rd August 1921 when the inquiry into the death was going on and letters were being sent out with a printed questionnaire to people touching this matter Dr. Calvert wrote following letter to Mr. Lindsay Z(127)

Confidential

Templecomb
103, Willingdon Road
Eastborne
3 August 1921

Dear Sir,

I remember the 2nd Kumar of Bhowal who came on a visit in Darjeeling in May 1909. He was suffering from "Gall Stones". His death made a considerable impression upon me at the time as I thought that had he only listened to our advice he need not have died. On the day of his death he was seized with a severe attack of biliary colic. An injection of morphia would have relieved him almost immediately of the pain. He refused to have any subcutaneous injection because his mother when in extremis had died after receiving a hypodermic injection, and he attributed her death to the injection, instead of to the illness which necessitated the treatment. Owing to vomiting and purging, opium by the mouth and rectum was not retained. The severe strain being unrelieved brought on collapse from which he died. I cannot now be certain whether I was present at the moment of his death, but I saw him shortly before it in a state of profound collapse. On my last visit his Bengalee medical practitioner was present, and arrangements made for the late Col. Maccus I.M.S. the I.G.C.H. Bengal, to see him in consultation in the morning. Col. Maccus had been Civil Surgeon at Dacca and knew the family. The Kumar did not recover from the collapse, and died the same night.

Yours sincerely,

J. T. Calvert.

It is not known what information was given to him by the letter to which this is a reply. In 1921 Col. Calvert had no recollection that he was present at death. He might of course recall it after seeing the affidavit, as he was forced to say, after this letter was elicited, but when he said he had an independent recollection of it, he was not telling the truth.

I am satisfied that this recollection is no better than 'his recollection of the 14 days' illness,' and 'the pain off and on' and 'his watching the case from day to day'. Both in view of his affidavit, he had to speak to, as things within his memory. One of them is demonstrably false. The other is equally so. For indisputable facts point to and establish that the 2nd Kumar "died" or taken as dead at between 7 and 8 P.M. on the 8th May.

That is established by the following, not one of them but all taken together.

(a) The course of illness points to death as near Collapse; no pulse; rubbing the body with ginger-powder all before dusk; on the defdts.' own account. On the Rani's account there is a blank between the arrival of Dr. B. B. Sircar and death, so far as treatment goes.

(b) The last telegram before the death was sent at 3-10 P.M. standard, i.e., about 3-40 local or thereabouts.

At 4-45 the eldest Kumar sent a telegram as follows. "Very anxious. Wire condition very often. Treat with best medical help. Wire immediately present condition."

No answer was sent to this telegram which one would expect to arrive at about 6 P.M.

(c) The visit of Dr. B. B. Sircar at dusk.

The account that Satya Babu gives of this visit is this. At about dusk he went out "possibly to give tagit for a medicine" all medicines had come before and came across his uncle Surya Narayan Babu at the Chowrasta. His uncle was then staying in a block of Balen Villa the house of the late Mahendra Nath Banerjee G.P. of Darjeeling. He was living there alone, without his family.

Satya Babu came across him and told him of the 2nd Kumar's illness. He did not know of it before, and had

not been told, though he was as good as his father he and his mother and the Rani had all been brought up at the house of her brothers. Satya Babu, told him that the Kumar was ill and such doctors were attending him, and that Dr. Calvert and Dr. Sen were at that moment in the house. It was he, Surya Narain Babu, who brought Dr. B. B. Sircir to see the Kumar at dusk.

Rani had said that this B. B. Sircir saw the Kumar as she sat by him, felt the pulse, questioned the patient, stayed some 10 minutes and left. At this moment she says that Dr. Calvert and Dr. Sen were not in the room.

She says that these two were going and coming, and must have been in the house; and she was suggesting the next room—the room No. 5 as the sitting room for the doctors, but she is clear that when Dr. B. B. Sircir saw the Kumar, the other two doctors were not in the room though she had kept both in the house from 2 to 12 P.M. except that Dr. Calvert went out for dinner.

It was apparently thought that this break in their continued presence might affect the case, and so Dr. Ashutosh was there to say that when Dr. B. B. Sircir examined the Kumar Dr. Calvert and Dr. Nibaran were both in the room; and Satya Babu, coming still after, said that Dr. B. B. Sircir saw the Kumar twice, once with the other two doctors, and once probably without. Nothing is impossible of course, but I think it next to impossible that any body would call Dr. B. B. Sircar, M.B., a doctor of little or no practice, looking to his diary, and to the evidence of his son, Mr. Bijali Sircir, when Dr. Calvert was in the house with Rai Bahadur Nibaran Chandra Sen. I consider it almost impossible that he would dare examine the patient in the presence of Dr. Calvert or that Dr. Calvert would tolerate it for a moment. I do not believe

“1. I do not think it possible. The very fact that this Dr. B. B. Sircir was there, and saw the Kumar at dusk is proof that Dr. Calvert was not there, and that the end was near, or the other two doctors would not be away, this one came as a forlorn hope. Ram Singh Subha told the truth when he said that when he came to this room that day at about 7-30 he found Dr. B. B. Sircir in this room, and the dead body of the Kumar. He did not go away in a few minutes. As a Bengalee, he did the decent thing and sat there apparently till the body was taken away. In his diary produced by the defdts. occurs the following entry, under the date 8th May :

“Kumar of Bhowal some hours”.

It appears from the evidence of Mr. Bijali Sircar that a pleader for the defdts. inspected this diary in May 1935. The Rani was examined in February. As his presence could not be denied it was never mentioned—by Dr. Ashu or Birendra in the former cases I mentioned—he was assigned a few minutes. Now the evidence is that he stayed on even after Dr. Calvert went, as it is said, for his dinner at about 8 P.M. and Satya Babu makes him sit in the “adjoining sitting room”—the room no. 5—where Ram Singh Subha had found the Kumar lying dead.

In his own diary purporting to have been written from day to day, but admitted as written later, but some 3 days later, so that there may be some scope for forgetting things, Satya Babu has written, under the date 8th.

“Kumar Ramendra expired midnight Darjeeling ‘Stepaside’ 4 doctors attended. One his family doctor Ashu Das Gupta 2. Rai Bahadur Nibaran Ch. Ghosh 3. B. B. Sircir M. B. 4, Lt. Colonel Calvert. They were all attending when he died.”

He says it is true of all except B. B. Sircir. It is true of nobody except Dr. B. B. Sircir and Dr. Ashutosh.

(d) Where is the telegram of death?

No body on the defdts.' side seems to know and what is more amazing is that not one of the witnesses who were at Darjeeling; not even Satya Babu, knows anything about it, when, or by whom, it was sent. They say nothing on the point. Only Birendra confronted with a previous statement of his in the Sreepur case that Dr. Calvert sent the telegram to Jaidebpur, says now that he was requested to send one after the death. That speaks for itself—there was an army of servants in the house. Dr. Calvert did not know the family.

It will be recollected that upon the appearance of the plff. and the declaration of his identity Mr. Lindsay wrote to the eldest Rani for all telegrams connected with the death. This was on 27-10-21 (Ex. 55) and the eldest Rani sent these to Mr. Lindsay on 9-11-21. Out of these have come the telegrams I mentioned. Among those there was not the telegram of death. It was once faintly suggested that the Bara Rani had kept this back, but this was expressly given up, as noted in the order-sheet (order No. 1079 dated 4-7-35). That is impossible to suggest if there was a motive to withhold one, there was a motive to withhold all, and the case of the defdts. is that she had called the plff. an impostor down to 1928 or so. These telegrams were sent to her by Rai Saheb upon her request in 1916 to send her husband's private papers (Vide Ex. 370, 372 and Ex. 65). The correspondence shows that what was sent to her was listed, and nothing would be sent out without a list seeing that these were sent with a covering letter of the Manager. This telegram could not be in that list, or the list would be produced, and the Collector, on receiving the lot of telegrams, would not be content, though the most vital telegram was not

among them. He was content because the telegram was in his possession. Rai Bahadur S. P. Ghosh deposing for the defdt. said that while he was in charge as Wards Deputy Collector in Dacca—he was so from 1923 to 1925—he saw the confidential papers connected with the Sadhu, and that he had seen among them the telegram of death. He was not re-examined. The statement is clear. Nobody has come to deny it. The Collector was content with the telegrams sent by the 1st Rani. Mr. Choudhury however did not admit that the telegram was in the possession of the defdts. and offered secondary evidence, just as the plff. had been permitted to give such evidence. As the point had not been decided, and the evidence of a witness can not conclude any body, I accepted such evidence from either side, subject to the decision of the question as to the party in whose possession the document was.

What might have been expected happened. It is common ground that a telegram announcing the death was delivered to the 3rd Kumar on the 9th morning at about 9 A.M. as he was on his way to the Station to catch the train for going to Darjeeling. He, with some people had come up to near the Railway Station, when a peon handed to him a telegram. So far it is common ground. Billo (P.W. 938) and Sagor Babu (P.W. 977) say that they were there, and the telegram was opened and read and the 3rd Kumar burst into tears, and came back weeping. Billoo says that he has no recollection of the words in the telegram, but in cross-examination he says that his impression is that it mentioned evening as the time of death. Sagor Babu recollects the words which he says were :

“Majo (or Majo Kumar) expired this evening”?

He was asked;

Q.—I put it to you that the telegram said “2nd Kumar died at midnight”?

A.—It said "Expired this evening" I saw it with my own eyes—asked if he noticed the hour of despatch he said he did notice the hour. The defdts, of course, did not put the hour of despatch.

The defdts. came with their secondary evidence. There was Phani Babu to give it. There was no suggestion of course to Sagor that Phani Babu was there, but nothing need turn on that. Phani Babu says that he was there, and saw the telegram. It read; "Heart rends to write Kumar expired last midnight". He says that these were the exact words, and the telegram was from Cabral. A dead man has been cunningly chosen as the sender, though he was illiterate. Under the date 8th May—the night of "death"—Satya Babu has entered in his Diary.

"Kumar Ramendra expired midnight, Darjeeling" "Stepaside" 4 doctors attending, one his family doctor 2. Rai Bahadur Nibaran Ch. Ghosh 3. B. B. Sircir 4. Lt. Colonel Calvert. They were all attending when he died. His last words to me a minute—before life was extinct were—tell Ashu that I feel difficulty in breathing. Bibha began to have fits. The doctors melted away. Only two nurses remained. Sarif Khan was mad. Sent Behara for sejomama who came at about 3 in the morning. Message to Utterpara and to Joydebpur. Sent man to the Sanitarium for men to get the corpse removed for funeral."

All this on the 8th night, and yet this man who sent the messages would say nothing about the telegram, and Phani Babu came with his "last midnight" to support the vague suggestion that the telegram was sent the next morning.

The reason why the telegram was delivered in the morning is fairly clear. Niranjana Roy (P. W. 985) was signaller at the Jaidebpur Railway Station at this time. His hours of duty were 6 to 6 P.M. and the telegram

Ex. 221 and 222 received on the 8th May the 11-45 and the 3-10 P.M. telegrams of that day are in his handwriting. He says that the last telegram made him anxious about the Kumar—the blood stool-telegram but he has no clear recollection of any telegram arriving at night, but the utmost that he can say is that there was a golmal at the Station at about 9 or 9-30 P.M. that the Kumar was dead—this was a golmal among the staff, and he was at the Station, as he would generally be, when off duty his quarters being close to it. This witness would not say a word more than he could recollect, but he says that if a message had come at night should not have been delivered at the Rajbari so as not to upset the family, there being no train to Darjeeling until the next morning at 8. The fact remains that a telegram was sent at night, and though on this evidence it can not be said that it had not been sent after midnight, its real contents are those stated by Sagor Babu that the Kumar had expired in the evening. If these were different, the original which, I find, is in the possession of the defdts would have been produced; and “the last midnight” is a piece of false evidence if the telegram was sent at night. The message sent to Uttarpara to Rani’s people has not of course been produced.

(e) One witness for the defdts. admit that there was no cooking that evening at the Stepside, though nobody had supposed, so the 2nd Rani and Satya say, that the Kumar would die.

(f) On this day were staying at the Sanitarium certain gentlemen who have deposed in this case. These are :

Mr. S. N. Maitra M.A., B.A. (Cantab), A.R.C.S. (Lond.), who was a member of the Indian Educational Service, and retired as Principal of College (P.W. 578).

(2) Professor Radhakumud Mukherjee, 50, M.A., P.R.S., Ph. D., Professor of Indian History, and Head of the Indian History Department at Lucknow University.

He is an author of books published in England, is a scholar of European reputation (P.W. 840).

(3) Dr. Hiralal Ray 45 A.B. (Harvard), Doctor of Engineering (Berlin), Member of the Institute of Chemical Engineers, London (P.W. 841).

(4) Nagendra Rakshit, 47, Manager of a concern of Messrs. Tata Iron and Steel Co. Ltd., Director of National Iron and Steel Co. Ltd., President, Bengal Industrial Association (P.W. 1021).

The evidence of these gentlemen is that one day they were seated in the common room of the Sanitarium before dinner—that would be about 8 P.M.—chatting, each does not recollect all the rest, but each recollects the day and the fact they used to be in the common Room before dinner. They recollect the day, not the date or any thing, but the day when a certain thing happened. When they were so seated, and there were others too, a man came with the news that the Kumar of Bhowal was just dead, and he made a request for men to help to carry the body for cremation. Principal Maitra has a distinct recollection of this request, the news broke in upon the talk they were having, and the thing has struck in his memory.

Prof. Radhakumud never met Prof. Maitra and Dr. Ray at the Sanitarium except during this visit. He says :

“While at the Sanitarium during this period I got no news of the Kumar of Bhowal, except that one evening when we were in a common room the news of the passing away of a Kumar of Bhowal was delivered to us.”

Q.—Why was the news delivered?

A.—They wanted to find out if men could be had to help them to carry the corpse.

'So far as I can recollect, only one man came and asked for this help, but I may say that I have no definite recollection of the number of men who came, but I definitely remember that the news came. That came before we had our dinner according to the bell. The dinner bell used to be struck at 8 or 8-30 P.M. not before 8 P.M.

I never came to the Common Room after dinner, as I felt cold, and could not go out of my room. I did not go to the cremation ground—it was too far below, and my health did not permit me.

Prof. Ray is equally definite about the news, and the time and place—it was before dinner, and when they were in the Common Room. Mr. Rakhit has also a definite recollection of the news coming when they were in the Common Room chatting, before dinner.

None of them went to the Sasan to cremate. They can not give the date. They cannot describe the message. None of them knew the Kumar or took any interest in him. Dr. Ray says he had no particular feeling over the matter, but the news was an unpleasant news. They all recollect that a man came, and gave the news, and asked for help, while they were in the common room before dinner, which used to be at 8 P.M.

There is absolutely nothing going to their credit nothing even suggested. I consider these witnesses gentlemen of unimpeachable credit. They were cross-examined with a view to show that their memory could not retain what they say it does, and the suggestion is that they had read things in the papers, and Dr. Ray and Dr. Mukherjee had a talk about the matter before they came to depose. Mr. Choudhuri also elicited from Dr. Mukherjee that he recollected the incident when he read about the case, and

that he had read principal Maitra's evidence, and carefully noted it in view of "its possibilities for me" meaning the bother of having to come to give evidence. Mr. Choudhuri asked the witnesses. "Do you recall when Sir Ashutosh Choudhuri died?" or question of that kind as a memory test. The witnesses could not give the dates any more than they could give the date of this incident, but he Mr. Choudhuri did not see that a date is not seen, but a messenger is seen, and the news of death, if brought by a messenger with a request, it sticks, and with it the hour as a part of the thing perceived. If you recall an incident, such as an accident in a street, or an unusual visitor that is to say, if the incident is one that, by its frequency, has not dissociated itself from any particular time, you can not recall it without recalling the hour as a part of your perception, although you have forgotten the date which is a matter for intellect. One way of getting a witness to fix a time is to ask the season in which an event had taken place, for a season is seen. Hundreds of witness on either side have deposed to having seen the plaintiff, and they could always give you time, whether at night or morning, or after-noon, though they have not the slightest notion of the date. After the 8th May, took place a condolence meeting at this very common room. Dr. Ray could not give the date of that, but could say that it was held later afternoon, and was over before dusk, which, looking to the papers connected with the meeting produced by the defdts., is correct. One would also recall that Satya says in his diary that he did sent to the Sanitarium for men to carry the body.

I find that these gentlemen did receive the news of death from a messenger in the common room of the Sanitarium before 8 P.M. It was contended that their testimony was not evidence, but hearsay. It was the death

speaking. It was part of the *resgestae*, like sending to an undertaker in England.

If these gentlemen heard the news before 8 P.M. what reason is there to disbelieve witnesses who swear that they had heard it too? (P.W. 838, 940, 980, 807, 672, and Kalidas Pal) of these, I must mention two witnesses, Madhusudan Mukherjee and Kalidas Pal examined on commission. Kalidas Pal was then a clerk in the Secretariat, and retired as Superintendent of the Issue Section of the Chief Secretary's office. He says that he was living in the *cutchary* building—the quarters for clerks of the Secretariat in May 1909, and that he was at dinner when people came to call Brahmans to carry the dead body. This witness had made this statement in 1921 before Mr. Lethbrige when he was recording the statements of the witnesses upon the questionnaire which I mentioned before. Madhusudan Chakravarty was also a clerk in the Secretariat, and retired as Head Assistant of the Bihar and Orissa Secretariat. He was living at Bhutia Bustee-Villa, and he says that Anukul Chatterjee, another clerk, was living there too, and he belonged to Uttarpara, Satya Babu's village. He says a little after office hours Surya Narayan came to call Anukul to come to cremate the Kumar, and Anukul went. There was no suggestion then that Surya did not know or was not present at death, but some statement not proved to be his, and not purporting to be his, was put to him to show that he had made an inconsistent statement somewhere, and the suggestion was that Anukul, now dead, lived at the *cutchary* building, and went to the 'Stepaside' that night after the death at midnight, that will be disproved by the diary of Satya Babu, but to that point I shall come later.

The Kumar I find apparently died after between 7 and 8 P.M. Looking to the course of the illness, the collapse,

and cramp, and the rubbing of the body to restore a failing circulation—all before dusk—the fact that no reply was sent to the 4-45 telegram of the 1st. Kumar, the visit of Dr. B. B. Sircar at dusk, the house going without cooking which begins at dusk, the contents of the telegram withheld by the defdts., the direct evidence of four gentlemen of unimpeachable credit that a messenger came asking for help to cremate before 8, no other conclusion is possible. Ram Singh Subha told the truth when he said that he heard a woman's cry, at dusk after he had returned home from the Lebong races, went to the house, and found the Kumar dead in the front room and Dr. B. B. Sircar seated there.

It is no wonder therefore that although the case put into the mouth of the 2nd Rani has been constructed with some skill, so that it might fit in some measure the previous testimony of Ashu and Birendra, and the condolence letter, at all events, and the prescriptions, and the telegrams, and the affidavit of death of Dr. Calvert, the period between dusk and midnight is blank. It breaks down by reason of the single fact which I consider unshakeable that the Kumar apparently died between 7 and 8 P.M. Some evidence goes into the blank 7 to 12 P.M. It is discredited by the time of death, and its own internal marks. Dr. Ashu puts into this period an injection. He can not say what was injected, for he could not very well say that morphia was again injected during collapse, after the pain had ceased. When he gave his narrative in the defamation case he did not mention any injection at all. In the Sreepur case he placed it at night at 9 or 10 P.M. (Ex. 394 (13)). In view of that the Rani had said that there was one injection between 4 and 6, and 'possibly' another which she does not remember. Satya Babu puts Dr.

Nibaran in "the sitting room" and makes him take his dinner there after Col. Calvert went away, so it is said, to take his. There was a drawing room downstairs, but this 5th room next to the Rani's room was made into a "sitting room" for doctors, so that Ram Singh Subha who saw the body there may be discredited. In giving an account of this room Ashu and Birendra and Bepin got so involved that Birendra ends by saying that he slept in the bed-room of the Rani on the 7th. and 8th. as the Kumar was ill, and the "sitting room" became the bed-room of the clerks before the Kumar fell ill on the 8th. Satya Babu blundered into truth—as to the sitting room when he said that when Surya Babu came he and Dr. B. B. Sircar came upstairs past the room below where the other two doctors were waiting—a mistake which he corrected, but Jagat-mohini does not mention this 'sitting room'. On the other hand she says that Dr. Nibaran came upstairs to give a dose of medicine at night. I do not believe a word of the evidence that Dr. Calvert, an I.M.S. waited in this house from 2 to 12 P.M. except for a short interval for dinner, and before this case was composed, Jagatmohini's evidence discloses its untruth. She gives a rather picturesque account of what was happening between dusk and midnight. She sat rubbing the powder, she and the other nurse, Mangli, and Dr. Calvert left. The room was perfectly still. She gave him some pomegranate juice. Suddenly he got worse. The Rani cried out. Dr. Calvert was sent for at once. He came, and prescribed something, at about 10 or 11 P.M. (no prescription after dusk) but before the prescription could come, there was a gurgle in his throat, and he died. She does not mention Dr. B. B. Sircar, of course, and keeps the Rani in the room all night, "clasping the corpse" and "she clasping the Rani" till the day broke. Shyamapada, Satya Babu's cousin,

pays a visit from 7 to 9 P.M. was told nothing serious would happen at night comes again at about 3 A.M. and does not find the nurses in the room, nor anywhere upstairs. The whole account was cut through by the fact that the Rani was having fits, though she denied it by the fact that the Rani appeared before nobody except women, and the khansamah Bepin who was young and her brother, as Birendra had said before in the Sreepur case, and as he admits also now, though he excepts himself for the 7th. and 8th May. He had also said that the Rani came into the room in which the Kumar lay at 9 P.M. and though he does not admit it now I believe that she was not in the room when Dr. B. B. Sircar came, and was weeping in the 3rd. room, as Ram Singh Subha saw her. Ram Singh is confirmed by the facts, not by his credibility alone, including the fact, the apparent death at the time I mentioned, and I remember the old women who say that upon her return to Darjeeling she cried, and said that she was not allowed even to see him very well. 9 o'clock was about the time when the body, according to the plaintiff's witnesses, was taken to the Sasan, and the former statement of Birendra was: "After 9 P.M. the Rani was in that room. Before that she was in the adjoining room, He denies it now, but Dr. Ashu still admits what he had said before 'that at the time of his death some people of East West and North Bengal were present, and these were outsiders. If these people were there she could not be in the room. It will be noted that people were present at death, but not a single outsider has been called, and none, according to the present evidence of the defdts. were present, except the doctors and nurses.

If, then, it is a fact that the 2nd Kumar apparently died between 7. and 8 P.M. it is almost inconceivable that he was not taken to the burning ground in course of the

night. Even death at midnight and cremation in the morning has a certain improbability, and the explanation given is that the place was Darjeeling, and men could not be had in the middle of the night. There is a prejudice against "basimora" (stale corpse), and the thing is not done and though Mr. Choudhuri referred to the case of public men. Like Sir Ashutosh Mukherjee or C. R. Das who were not cremated at once but carried with a public procession to the burning ground. The exceptions are of recent origin, and public men stand on a different footing. It was not argued before me that if the "death" was at a little after dusk, the body could lay in the house all night. People were going about between 7 and 8 P.M. for men to carry the body. There will be therefore no reason to reject the evidence that the body was carried to the burning ground at about 9 P.M.

That dead body was never burnt.

The real test of the evidence of touching this part of of the enquiry is the hour of death, but of the witnesses who joined the funeral procession at night, or saw it pass, one might well rest on his own credibility, and another almost as good as he. The former is Babu Padmini Mohan Neogy a gentleman of 55. He is a Manager of an Estate, has been an Honorary Magistrate for 20 years, exercising first class powers, and is a nominated member of the District Board, and other public bodies. In 1909 he was Sub-Editor of the "Bengalee", then a well-known English daily news-paper. He was on leave, and staying at the Sanitarium and he says :

"I was staying at the Lowis Jubilee Sanitarium—when one day at dusk a man came, and said that the Kumar of Bhowal was dead, and he wanted men to help at the cremation. I was one of 7 or 8 men who therefore

went to the Stepside. We were asked to go there as it was the house in which the Kumar was. The 7 or 8 people who went with me I knew by face. I came to know their faces at Darjeeling.

"We took, roughly speaking, about half an hour to go to Stepside. Reaching there, I found the dead body covered up on a charpaya downstairs—but I do not remember whether in a room or outside. Directly we reached there, the body was taken to Kagjhora. After taking the corpse there we of the Sanitarium came away as the weather looked bad".

The witness did not know anybody at the Stepside. He says that he got back to the Sanitarium in 15 or 20 minutes or half an hour say at 9-30 or 10 P.M. and rain came a little after.

During the inquiry by Mr. Lindsay the statement of this witness was recorded by Mr. R. C. Dutt, Deputy Magistrate on 7-6-21. He deposed in the Defamation case. I see no inconsistency in his account in any material particular, and his manner impressed me as that of a truthful man. He admitted what no false witness would that some people interested in the plaintiff also saw him and took down what he said, and this was about the time Mr. R. C. Dutt took down his statement, but he cannot recollect whether it was before or after.

The other witnesses who say that they joined the funeral procession at night, and went to the burning ground are :

P. W. 941 Kiran Mustaphi, 60 retired Manager of a Tea Estate resident of Darjeeling. Was living in his quarters as Manager below Bloomfield Tea Estate in 1909 (Vide sketch).

P.W. 944 Biseswar Mukerjee, 58, pensioner :

Was at Deputy Commissioner's office at Darjeeling from 1899 to 1907 and then clerk at the office of the Magistrate at Kurseong till 1914.

P.W. 947 Jatindra Chakravarty, 53 lived at Darjeeling at the house of his sister's husband, Raj Kumar Kusari, with his two brothers, Basanta and another, from 1904 to 1933.

P. W. 986 Manmatha Nath Choudhuri, owns the concern, Darjeeling Motor Service which employs 17 Motor vehicles, owns three houses at Darjeeling. Lives at Darjeeling.

P. W. 968 Chandra Singh, Record keeper of the Deputy Commissioner office, retired, born and brought up, and educated at Darjeeling. Was attached to Kalimpong Khas Mahal office from 1903 to 1921. Would come to Darjeeling to pay in collections, and to do the revenue work of Khas Mahal which had to be done at Darjeeling. Sitanta Kumar Bagchi (on commission) 44.

Was a clerk in the Darjeeling Post Office from 1906 to 1918. Was in the service when he deposed. The account they give is that they all heard of the death after dusk, went to carry the dead body, as help was wanted, went with a procession of some 25 men from the Stepside—two of these, Kiran and Manmatha joined it at the Chourasta—and reached the Sasan at about 10 P.M. The procession had started at about 9 P.M. Kiran and Manmatha came away after setting down the corpse at the Sasan, and the rest tell us what happened. A few minutes after the khat was set down rain came, a heavy shower—and as there was no shelter there, they ran up the hill-path, and got into shelter-huts or a slaughter-house there, and waited for about an hour and when they came back and set about selecting a place for the pyre, it was noticed that the body

was not in the khat, and there was a hue and cry, and looking about with lanterns, but the body could not be found. So they came back. The account so baldly put is circumstantial particularly in the deposition of the hill man Chandra Singh.

The witnesses are all agreed that the route taken by the procession was the Commercial Row route.

This account, however consistent, will sound like a tale. Its real security is the death, at dusk, and the fact that body was taken to the Sasan that night. This last fact might well rest upon the fact of death at dusk alone, or this coupled with the evidence of Padmini Babu; but there is besides other evidence of people who had seen the procession pass at night, and of a man in a shop in which the funeral requisites were purchased at a little after dusk, and of men in another shop in which was bought the firewood. There is also the evidence of a lady whose brothers including Basanta went out that night to cremate the Kumar (Sushila Sundari P.W. 1016). She speaks to the fact that her brothers went, and came back drenched at night. One witness, Babu Jnan Chandra Banerjee. Head Clerk Executive Engineer's office, at Darjeeling met Anukul Chatterjee—the man whom Surya Babu called at Bhutia Bustee Villa at a little after dusk coming home drenched (P.W. 838). Of the witness who saw the procession pass at night, I may mention Khan Saheb Nasiruddin Ahammed, 70, a man of substance for an Indian. I do not propose to give their evidence in detail. They would not be believed if death at dusk was not a fact; and if that was a fact there would be no reason to disbelieve them (P.W. 940, 963, 966, 978, 980, 983) Mr. Girish Ghosh, the owner of the House Called the Town End, speaks of his son, Fanindra, returning home at 11 or 12 P.M. and telling him that a wonderful thing had happened that the Kumar's.

body could not be found. I notice there was an attempt in 1921 to get the statement of this Fani (Ex. 431) people seen in this procession have been named, so far as each could, and these names number 26, and included one Sanjib Lahiri, Anukul Chatterjee, and Fakir Roy.

The case of the defdts. as to this Anukul Chatterjee is that he went with the procession in the morning;—and they examined Fakir Roy as their witness. He says that he did not see, or join any night procession, but only saw the morning procession pass, without joining it. He says that before or after this, Anukul Chaterjee had told him that he had gone to burn the Kumar on the previous night, and that his body was aching and he adds: there was storm and rain on the night of the day previous to that in which I saw the procession it was rain-storm, like “Kal-baisaki” (Baisak rainstorm) from dusk to 9 P.M. That was clear enough, but in re-examination he was asked :

Q.—Our conversation with Anukul—when?

A.—After dusk.

Q.—Did he say when he had returned from cremation ground?

A.—Don't remember.

Q.—Did he say he had gone to cremation ground?

A.—Yes.

Q.—Did he say when and where from?

A.—From Stepside. Don't remember if he said at what hour of the night.

Q.—Did he say when he went to Stepside?

A.—At night.

Q.—Can you guess at what hour of the night?

A.—Would I guess or he?

Q.—What you collected from Anukul Babu?

A.—From that, perhaps 10 or 12 P.M.

Don't remember anybody in the procession.

Q.—Did he say he had cremated the body?

A.—Said he had gone to cremate—did not say whether he had cremated the body.

Q.—Did he say he had left the body on account of rainstorm?

A.—No.

Q.—Did he say he could not cremate?

A.—No.

Q.—Don't remember if he said when he had started with corpse.

Q.—You mentioned Baisak (rain-storm) in cross-examination.

When does it begin?

A.—From end of March to 1st week of May.

Q.—When it takes place it takes place in all Darjeeling?

A.—Yes.

Q.—He died during Baisak rain-storm season. You said that on the previous night it rained from dusk till 9 P.M. but do you remember at this distance of time that there was really rain and storm on the night previous to the procession?

A.—I have no recollection.

Q.—Did you say that there was rain and storm on the previous night because it was the season for Baisak rain storm?

A.—Yes.

The re-examination looks incredible. It was before a Commissioner. It was asking the witness to deny the rain and storm which he had seen. Nobody can recollect whether it had rained on a given day in the past, unless it is bound up with some incident which he recalls. This witness remembers the rain because it is bound up with conversation. Whatever the truth of the conversation,

but the fact of that conversation the defdts. themselves helped to establish by eliciting in detail its content, and its subject which was an incident of some interest, and which the defdts. agree he remembers or they will not examine him.

This rain, the night before would, coupled with other facts carry the plaintiff's case the whole way, but it is necessary to consider in a little detail the three things that were urged as discrediting the night procession, and its sequel. It rests, as I said on the firm ground—the 'death' after dusk, but still the things urged should be examined. One of them is that there was no rain or storm. Secondly, there was a shed in the Sasan itself. Thirdly, there were no huts or shed, near about in which the people there could take shelter. I would take up the shed in the Sasan first.

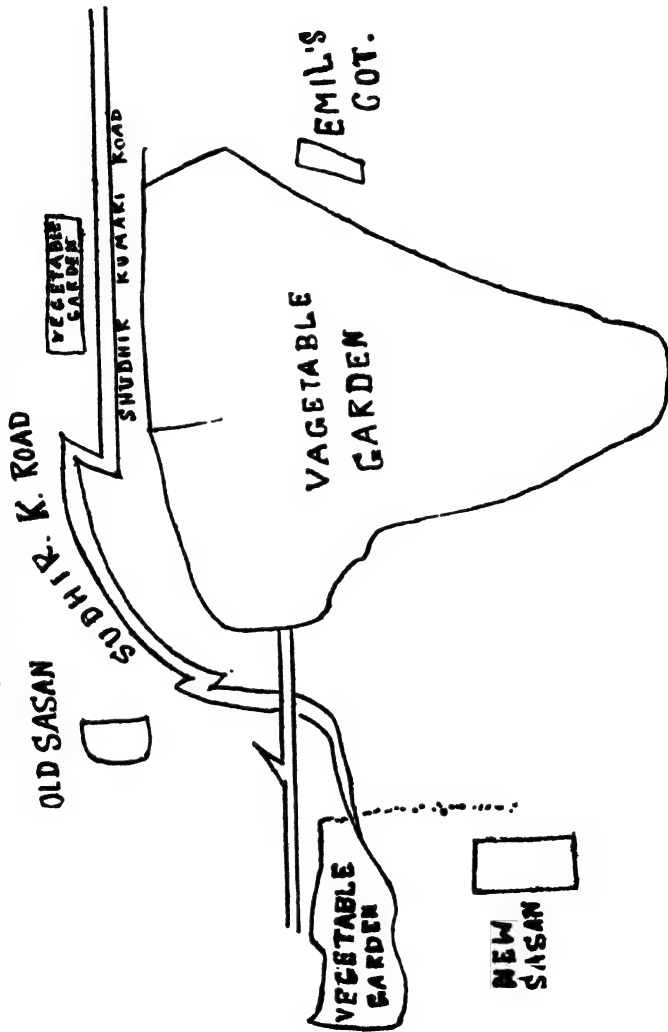
. On the day in question there was, it is admitted a shed in the new Sasan, which was further below and the case of the plaintiff is that the body was taken to the old Sasan where there was no shed at all. To appreciate the point the following sketch would be useful : (*Vide Sketch Map*).

In May 1909 the way to the Sasan,, old or new, was by the Sudhirkumari Road as shown above. As I said before, to come from the Stepside you come down the Commercial Row route, descend to Cart Road, go down Ferndale Road and thence down Conservancy Road and thence into Victoria Road and then going along it a little you get into Sudhir Kumari Road and go down, down, to the old Sasan to your right. Up to August 1907 this old Sasan was the only Sasan of Darjeeling at this spot.

In August 1907 a new flat was constructed to the South of the old beyond the Jhora at the site marked on the sketch. The road did not go up to that but stopped a little short of it, at "6" where it took a turn towards the

SKETCH NO. VI.

Vide Page 588 (Burning Ground at Darjeeling).



vegetable garden of Mr. Morgenstein, on the West.

A most determined attempt was made by the defdts. up to a stage to show that the new Sasan had always been the Sasan and the shed that stood there in May 1909 had always been there, though reconstructed, and the body of the Second Kumar could have been taken only to this and not to any other. It is now admitted that the old Sasan was indeed the Sasan before, but that the new Sasan had been made in 1907 as admitted, and the old Sasan was then not in use.

This admission that there was an old Sasan was obtained only after the examination of Mr. Mani Mohan Sen who was Secretary of the Hindu Burning and Burial Committee of Darjeeling. The defdts. had put in various papers connected with this committee and its proceedings during the examination of Mr. R. N. Banerjee on commission, and had obtained from him the evidence that the Sasan they contend, for the new Sasan was not a new Sasan at all but has been always the Sasan, shed and all, and he pointed to an old tomb there of Mrs. Pillay to support this position. Reading the proceedings of the Committee which the defdts. have themselves put in with the plan of Mr. Mani Mohan one finds these facts :

The new Sasan and the site of the old Sasan were within a grant to the Hindu Community for burning and burial purposes 15-2-03. The Committee was considering the question of dismantling.

"The present shed which is in a dilapidated condition is a most unsafe site.

23-2-07.—A public meeting to improve the burning ground.

5-5-07.—Mr. Mani Mohan elected Assistant Secretary of the Committee. Asked to prepare a plan and estimate for a Sasan and a shed.

8-5-05.—The Committee propose to construct the new shed with the materials of the old.

21-5-07.—Mani Mohan Babu's plan approved. This plan is before the Court. It is Ex. 202. It shows the existing Sasan, and the old Sasan—and then site and the proposed shed.

6-6-07.—The plan approved by the Municipality.

25/6 to 11/7/07—New shed under construction on the new site.

13-2-08.—Mani Mohan Babu thanked by the Committee and the Committee records "a new shed has been constructed and the ground cleared already" (Ex. 128(4)).

If you look into the proceedings, without the plan, you would suppose that all that was happening was improvement of the same Sasan and reconstruction of the same shed. Both were on a different site, and one or two works in the proceedings themselves also give a clue to that, now that one has been the plan.

Looking further to the proceedings one finds that on the Sasan a Pyre shed came to be built, and it was built before May 1909. In the plan of 1907, to which I referred, the approach road to the new Sasan from the end of the Sudhir Kumari Road—the point where it turns towards the Vegetable Garden on the west was not complete. It is marked by a dotted line, and Mani Mohan was cross-examined when he said it was not complete.

On 25-6-09—the Committee was recording the condition of the new Sasan and complaining that the road between the point where the Sudhir Kumari Road ends, and the burning ground has not been properly made; and this matter was referred to in a resolution dated 8-12-08. Blue prints of Municipal maps are misleading, as they have incorporated later improvements.

The attempt made through Mr. R. N. Banerjee and

through the witness Fakir Roy, examined on commission, having failed the case is that the new Sasan had been made before 1909 which is a fact, and was being used—which is also a fact, and the old Sasan was no longer in use and nobody would take any dead body there.

The defdts. called retired Municipal employee, Mr. Lifts who was Conservancy Superintendent of the Municipality. He says he knew both the old and the new cremation grounds, that after he saw the new one, bodies used to be burnt on the pyre made by the Engineer, and that the old cremation ground was not then in use. He was speaking of the year 1907 when he joined as Market Superintendent. It is perfectly clear he had been to the new Sasan only after 1912 or he would not say that as you go down the road you find the new Sasan to your left. That applies to the new road to the new Sasan made in 1912—the new Sudhir Kumari Road which come to the new Sasan from the South, and whose construction is in the proceedings.

Mr. Manmatha Choudhuri for the plaintiff (p. W. 986) says he has burnt numerous dead bodies at Darjeeling. He seems to be one of a set of young men who never refused aid at cremations, and learned Counsel, Mr. Choudhuri elicits that Mr. R. N. Banerjee was also one of them in 1909. He says that until the new Sudhir Kumari Road was made, he would burn bodies oftener into old Sasan, and that he went to the new Sasan for the first time during the cremation of Mr. M. N. Banerjee Government pleader of Darjeeling, which was in 1910. There was really nothing to choose between the new Sasan and the old in May unless you wanted a shed, and at night one might choose the old as it saves going further down, and cross a jhora. This jhora, though disputed, appears in every map and is admitted by Mr. Morgenstein; and in May 1919 the approach road was not made or well made, though Mr.

Morgenstein says that the Sudhir Kumari Road went further down past the new Sasan and right up to the Tannery. He was a body of ten in 1909, is making a mistake.

If the road went further down Mani Mohan Babu would not put dotted line, and the Committee would not mention the Sudhir Kumari Road, and say that the road from the point up to which the Municipality has kept it up to the new Sasan has not been made. Shamsuddin, a Municipal Surveyor, has said that the road shown on the map from the new Sasan to the Tannery on the west was made later. I have already said that the old Sudhir Kumari Road was a difficult road, hardly 3 ft. broad unmetalled, running between jungle on either side, without lights, and with steps at points. One carrying a dead body would therefore go to the first Sasan to one's right—the old Sasan, unless of course it has ceased to be in use. It was however in use, and perhaps oftener, looking to Manmatha Babu's evidence, which is confirmed by the evidence of two witnesses on the side of the defdts. Saroda (D.W. 402) went to the old Sasan to burn a dead body in 1315 or 1316 he says (1908—1909) but he says also that there was no shed then. Which means that the new Sasan had come into existence. The shed on the old Sasan went to make the shed in the new. He also says that the road from the old to the new Sasan was made only after the new Sasan was made. It did not exist before. Mr. Morgenstein is wrong, as I have found on other grounds. He admits however that after he came to live in the house nearby in 1907, he found the old Sasan in use, and about a year after saw the new Sasan put in use. He does not recollect when the old Sasan ceased to be used. Obviously after the new road of 1912 nobody would go to it, as the new Sasan would be nearer that way.

Then comes the point about the huts which the witnesses took shelter in. It will be seen that Mr. Morgenstein held under the Municipality the patches of garden land the middle patch, the northern patch and the western patch. On the north of the northern part of the central patch came into existence the present Slaughter House, and the Hindu Burning Ground Committee was consulted when that was made as appears from a document put in by the plaintiff (Ex. 203). It appears also from the evidence of Manmatha Babu (P.W. 986) who says he took shelter in a hut close to the present Slaughter House which had not come into existence. The Slaughter House, he said was further below. It is perfectly clear there were huts on the vegetable garden plots for the malis, or seedlings, over and above sheds shewn in the Municipal maps. Shamsuddin for the plaintiff, the Municipal Surveyor, who has been in services since 1907 saw sheds on those patches, and explained that the gardens were leased to Mr. Morgenstein with certain permanent structures. These alone appear in the maps made for the limited purpose of granting a lease, and these could not be relied upon for every possible feature. I would not expect tin huts to appear there. Mr. Morgenstein, then a boy of ten, says that there were no huts on the garden patches except glass houses but had to admit there were sheds of malis, and servants, and syces on the north, and south, of the Sudhir Kumari Road, and these are precisely the huts which the witnesses might have got into as a shelter from rain. Two of the witnesses, however say that they took shelter in the Slaughter-house. One of them is Chandra Singh. Asked to describe he calls it some 25-12 ft. but the present one of which there is a

plan is much bigger. It is obscure which Slaughter-house they mean, or it may even be they are mixing up the present one with the hut they got into. Then, as to the rain. The witnesses who have deposed for the plaintiff on this day say that there was rain that day at about ten, and it lasted about an hour-rain and high wind. They say it in connection with the funeral procession which they joined, or which they saw passing, and they who went upto the Sasan, depose to the rainstorm which overtook them at the Sasan, or on their way back after putting down the khat, or as in the case of Padmini Babu after he returned to the Sanitarium which is not very far off (vide sketch). It is supported by the evidence of Fakir, a witness for the defendants that there was rainstorm such as takes place in Kalbaisaki i. e. to say a short heavy shower with high wind, what is called, I believe, a Nor'wester. It was the time for this sort of thing. It was not Monsson. I would believe this evidence unless the rain is excluded by anything, and the defendants contend that it is excluded by the rain-reports.

At Darjeeling a rain-gauge used to be kept then at the St. Joseph's College, at St. Paul's at the Botanical gardens, at the Municipal Office and at the Planters' Club. Mr. Chaudhuri suggested Observatory Hill also to P. W. 839 (Jnanendra Nath).

The reading at the St. Paul's are published by Govt. in the Gazettee. These shew no rain at Darjeeling after 8 A. M. on the 4th May to 4 P. M. on the 12th apparently Mr. Lindsay looked up this, and formed the opinion that the plaintiff's story was false.

St. Joseph's records no rain on these days, except the 11th for the figure for the 12th is 300 and Father Peel explains that this means the figure entered at 7-30 A. M. which means rain either on the 11th or on the 12th before 7-30. No rain at St. Paul's on the 11th or 12th.

Neither party produced the reading at the Planters' Club. Manmatha Babu says that some years ago two gentlemen came to the Club, and took away the book of the year 1909. He was then Head Clerk of the Planters' Club. Nothing further need be said about the matter.

Now witnesses including Dr. Calvert has agreed that at Darjeeling it may rain at one place, but not in another it may rain higher up, not lower down. The sort of thing may happen, and even in the plains, the phenomenon is known, I pointed out the 12th above.

In the middle of the trial the plaintiff called for and produced a copy of the rainfall register of 1909 of the Darjeeling Municipality, and the defendants called for and proved the register of the Botanical Gardens which are on the Victoria Road and below the Bazar level. The evidence on the side of the plaintiff is that the rain that occurred on that day fell on the Cart Road or even a little higher but no witness mentions as high as the Mochenzie Road or the Commercial Row or this Chowrasta. That would mean no rain at the Gauge at the Municipal Office which is on the same level as the Bazar, and in the Botanical Gardens which are lower and not far from the Sasan itself, though not so low.

It appeared from the copy of the Municipal rain-

register produced by the plaintiff and supplied by the Municipality that the entry just below the 3-5-99 has been tampered with. The entry next below reads like this 13/5/09.

The 13th looks like alteration. The plaintiff suggest that it was an alteration of 8 while the defendants suggest that it was 13 to which an appearance of alteration has been given. The defendants had always considered rain-fall record so important that it is difficult to understand why they applied for a copy of this on in November 1934 (the copy filed during argument) when the alteration had taken place, and the Deputy Commissioner made some inquiry into the matter in April 1935 (483 for identification). It is equally strange that the plaintiff did not apply for it, as far as I can see before June 1935 (Vide Ex. 422 to 425). I have looked closely into the entry. It is not possible to say what the original entry was. I cannot speculate, and hold that this entry which, for some strange reason, neither party had thought of either confirms or refutes the rain.

As to the Botanical Garden Register I have looked into it. It is wholly unreliable. It was produced by a clerk of the Gardens who deposed on 23-7-35. He said he was appointed Clerk in December 1908 and has been keeping the book since. He said he had entered figures from the 6th December 1908. As his answers as to certain matters were looking odd his service book was produced. In that 1/3/09 has been entered as the date of his permanent appointment. It may be he was only acting before, * but I notice these facts (1) The page

for 1909 occurs in a book and in this book there is a leaf for each year. From 1903 the figures for rainfall are on the first page, and the temperature figures on the next page. It goes on like that—first page rainfall and the next page temperature. In 1909 the order is reversed temperature first, rainfall next, and the heading of the rainfall page is in different ink and looks recent. The Clerk had said that the heading is written ahead, but the ink is not only different but more recent. At the foot of the pages is a stamped designation “curator” but there is no signature, though the page for 1915 bears the signature of Mr. Cave, a former Curator. The witness proved the entries for the whole year 1922 as his (Z 210) but it appears from his service book that he was on leave from 15/8 to 31/8 of that year, and yet the entries of the the whole year look like the same handwriting. It seems therefore that although he is a clerk at the Gardens he did not keep the register at all ; and the more recent ink of the heading and the reversed of the order of rain and temperature in 1909 points to an insertion of what was not there. I consider the register for May at all events falsicated and wholly unreliable, and does not refute the rain.

Lastly, I have to consider the evidence of Father Peel, Professor at St. Joseph's College. He is in charge of the Meteorological Department of the College which is about 500 ft. lower than the market, and $1\frac{1}{4}$ to $1\frac{1}{2}$ miles off at a point called the North point. He says that if there was no rainfall at the St. Joseph's or at St. Paul's during 5th to 11th May there could have been no rain near Mr. Morgeinstein's house or in the Market.

Square. His reasons are somewhat obscure to me but they seem to be this ; pre-monsoonish storms are due to one cause ; cold currents come from the Singgila Range, and as it comes down the Darjeeling spur it might meet hot currents coming up the Manchi Valley or it may go further down and meet hot currents from the Balisan Valley. In the former case, the rain will be caught at St. Joseph's, and affect North Darjeeling, and in the latter case, it will be caught by the St. Paul's and will affect South Darjeeling. The Rev. Father Peel adds that you can predict weather, if you get all the data, but as that is not possible you can predict tendencies. He also says that the direction and the velocity of the winds, and the steady rise of barometer, during 6th to 10th May, as these appear in the Chart, indicate a spell of dry weather. If I remember aright something was said by learned Counsel about no rain in India during this period. I find however, as much as 2·41 inches of rain on the 5th 4·98 inches on the 6th, 5·77 inches on the 7th, 3·36 inches on the 8th, 1·17 inches on the 9th May, 0·21 on the 10th, 0·79 on the 11th, 2·10 on the 12 May, in Jalpaiguri District which is at the foot of the Himalayas, and must include the Valleys near Darjeeling, and certainly Siliguri. It looks Kalbaisaki indeed with wind towards the North. It seems to me as the season for Kal-baisaki which begins between end of March and beginning first week of May, according to Fakir Babu (D.W. on commission) and according to the defendants' leading question, you cannot exclude rain on a given day which the witnesses remember, by meteorological data which are too complex to permit prediction. If Kalbaisaki occurs at Darjeeling it does not come from the north, but from the south, from the

plains and I am not satisfied that the rain on that day can be excluded on such general grounds.

I have thus found that the facts connected with the Sasan, or the shelters, or the rain, do not discredit the account given of what happened at the Sasan on the night of the 8th May if the body of the Kumar was taken there that night, as it must have been, if he had died at about dusk. The positive evidence that it was so taken is not discredited by these facts, and the other fact that remains to be considered is the admitted funeral procession on the morning of the 9th when a dead body was carried to the new Sasan and burned there.

The procession on the 9th morning.

On this topic 13 witnesses were examined on commission, and 22 at Court besides the inmates, Satya Babu, Dr. Ashu, Birendra and Bepin.

Nine witnesses for the plaintiff speaks to this funeral procession.

In May 1909 the Government was at Darjeeling, and the clerks of the Secretariat, some of them, used to live in their quarters, called the Cutcharee building. That building faces the Market, and is on a level with the Cart Road. It is some 300 yds. from the Railway Goods Shed where, as I said, one would descend into the Ferndale Road leading to the Sasan by devious route. In this Cutcharee building lived Shyama Das, the cousin of Satya Babu, a man of Uttarpara and from this mess came a number of people to the Stepside, on the 9

morning to carry the dead body. Some of the witnesses examined by the defendants—in fact most of these on commission—were among these.

Other witnesses came, so they say, from other places, and some of them certainly came.

The account given by Satya Babu and the nurse Jagat Mohini and some of the witnesses is this :

The Kumar died at midnight. The Rani lay all night clasping the dead body, and the nurse clasping her in the room in which he had died. The doctors had “melted away”. Satya Babu, so he says, sent a slip of paper to his friend Mr. Rajendra Sett who was in the Sanitorium, telling him that the Kumar was dead ; and a similar slip to his cousin Sayama Das in the Cutcharee building. Towards dawn, say about 3 or 4 A. M. some people came, but in the morning came a lot of people, and the Kumar’s body was taken down next morning, placed on a khat in the small compound in front, and the bier, after some flowers were put upon it, were borne away to the Sasan with a procession. Two Gurkha guards went ahead with reversed arms, and pice and small bits of coins were scattered as the procession went its way. The route taken was the Thorn Road route, not the Commercial Road route, so that it went past the Hospital, and after it reached the Cart Road, past the Market and the Cutcharee building until it reached the Goods Shed, and thence along the route I described. A procession going past the Hospital would go past, further down the Balen Villa the house of Mr. M. N.

Banerjee, the G. P. of Darjeeling in a part of which Surjyanarayan Babu, the maternal uncle of the 2nd Rani, was living as a tenant.

At the Sasan the usual rites were performed and the body cremated.

This is the defendants' case.

The case of the plaintiff is that the body was not that of Kumar at all, but some other body secured in the course of the night. and was seen, and carried completely covered up, and burned at the Sasan without a single rite. The extreme improbability of this case is obvious, and its real answer is the identity of the plaintiff and the fact, apart from this identity, that "had occurred at a little after dusk and the body taken out at night, and that body never cremated. But the evidence on this point must be dealt with the footing as if these facts have not been found.

The witnesses who speak to this procession are these: or to seeing the body before it started are these :

1. Kali Poda Mitra on commission, 45, lives in Calcutta.
2. Kanai Ram Mukherjee, 44 of Baidyabati, Hooghli.
3. Nalini Ghosh, 46 of Calcutta.
4. Shyam Prosad Banerjee of Uttarpara 48.
5. Mahendra Banerjee 52 of Uttarpara.
6. Khetra Mohan Bhattacharjya, 49 of Manirampur 24 parganas.
7. Tincori Mukherjee, pleader, Arambagh, Hooghli.

8. Rajendra Seet of Bali, 52.
9. Bejoy Mukherjee, 39 of Bali.
10. Jagat Mohini Debi, nurse, 50.
11. Mr. R. N. Banerjee, Barrister-at-law, 41.
12. Haran Chandra Chakladar, 56 Lecturer, Calcutta University.

13. Geeta Debi.

The first six were clerks in the Secretariat and still in service, except Syama Das who has been dismissed, as I said before.

These 13 people were examined on commission.

The following were examined at Court.

D. W. 11 R. Lewis, a retired Railway Guard.

D. W. 13 Fredrick Lofts, a retired Municipal Employee.

D, W. A. Pliva, a confectioner at Darjeeling.

D. W. 57 Durga Chandra Pal, Head Asstt. of a Dept. in the Secretariat.

D. W. 66 Naren Mukherjee of the Secretariat.

D. W. Surendra Chandra of Darjeeling.

D. W. Nurul Haq of Jalpaiguri.

D. W. 71 Matiar Rahman of Rangpur.

D. W 73 Palman of Darjeeling.

D. W. Lakhi Mudi of Darjeeling.

D. W. 73 Kali Chhatri.

D. W. 103 Dr. S. C. Roy, M. B. R. C. P.

D. W. 105 Satis Chandra Mukherjee.

D. W. 119 Kali Chhatrini.

D. W. Satya Prosad Ghosal of Darjeeling.

D. W. Nanda Gopal Gargari.

D. W. 71 Tejbar, a former Police Constable, of Darjeeling.

D. W. Purna Banerjee of Darjeeling.

D. W. 113 Panchanan Mitra of Bali.

D. W. 309 Mr. Holland, a retd. Govt. servant.

D. W. 420 Tara Pada Banerjee.

Besides these have deposed the 2nd Rani, Satya Babu, Birendra, Ashu doctor, Bepin, the inmates of the house, and Anthony Morel, another inmate examined on commission.

Of the witnesses examined at Court none except the inmates and two witnesses, Satya Prosad and Gargari went, according to their deposition' to the Sasan some only saw the procession pass, and were called to prove the Thorn Road route. These are Mr. Pliva, Mr. Lofts, Mr. Holland, Purna Banerjee, Panchanan. The rest had gone to the Stepside, so they say, saw the Kumar's body on khat in the yard, or saw it brought down from the first floor to the yard, and placed on the khat, and saw him borne away with a procession. They speak to the Thorn Road route also.

All who had deposed on commission except Gita Debi had come to the Stepside in the morning or earlier, as some of them say, and accompanied the dead body as it was being borne away, and saw the cremation through.

The account given is that the body was upstairs in the room in which the death had occurred till about 7-30 or 8 A. M. brought down at about that time, put down on a khat on the yard, and some flowers were put upon it and then it was covered with a shawl ; and upon it some flowers were put too, add then it was carried to the Sasan. There the usual rites were performed, the body was anointed with ghee, bathed, dressed with a new cloth, a pinda was offered, mantras were uttered and after the body was placed on the pyre, Birendra did the Mukhagni (touching the mouth with fire) and then the pyre was lit. This Birendra then rolled on the ground with sorrow, and Sharif Khan, the durwan, grew violent, and tried to throw himself on the burning pyre, but was prevented. The last two details have been admitted.

The witnesses who give this account had all come in the morning, but four of them are said to have come before dawn. These are Bejoy Mukherjee, then a boy of 17 or less, and Mr. Rajendra Sett from Sanitarium, and Shyam Das and Anukul Chatterjee from the Cutcharee building.

On the side of the plaintiff have deposed three witnesses who say that they joined this morning procession from the Stepside and were at the Sasan till the end. These are :

1. Basanta Kumar Mukerjee, Superintendent, Deputy Commissioner's Office Darjeeling, who has been living at Darjeeling since 1899 (P. W. 823).

2. Swami Onkarananda (P. W. 603) formerly named

Khetra Nath Mukherjee who was an employee of the Darjeeling Municipality from 1901-27.

3. Ram Singh Subha (P. W. 967) the Munshi of the landlord of the Stepside whom I mentioned before.

Nalini Kanta Chakrabarty of Deputy Commissioner's Office (on commission.).

The account given by Basanta Babu is in effect this : "Jogat Mohini Dasi the nurse, whom I know came to me in the morning and informed me that the Kumar of Bhowal was dead, and that as a Brahmin should come to the funeral procession. She asked me to come to the "Stepaside." I reached there about 8 A.M. and found the dead body wrapped in cloth and lying on a khat in the yard. The whole of the body was wrapped with cloth so that I could not see its face, or any part of the body.

20 or 25 minutes after I had reached the "Stepaside" the procession started and I accompanied it. I went with it, but did not put my shoulders to the bier. The body looked tall- Not shorter than I, may be a bit taller. In our country bodies are never left untouched but this body in the yard nobody was keeping in touch, though there were people moving round it. A young lady was weeping upstairs. I saw her and was told she was the Rani. Nobody else was weeping, But they were all sad.

'The prsocession went down the Commercial Row route Commercial Row-Auckland Road, Robertson Road, Lloyd Road and the rest. Not Thorn Road route.

'At the Sasan it was the new Sasan "the body was placed on a partly formed chitta—such chittas are kept there the body wholly covered as before, was placed upon the chitta, cloth and all ; ordinarily, the dead body of a Hindu is bathed. This corpse was not bathed. Ghee was not rubbed over it, nor was it made to put on a new cloth. The usual pindas offered before Mukhagni not offered.

"I have never seen any corpse burnt in this manner—in the manner this was. For this corpse a boy, looking 17 or 18 was asked to do mukhagni. He began to cry. Then I moved away a little, and did not see whether the mukhagni was in fact done I moved away 20 or 25 ft. off, but was in the compound. At the time the boy was asked to do mukhagni, wood was piled on the top of the body. I saw the chitta burning, after I had moved away a little. I did not wait there till the end, but for 1½ or two hours. So long as I was there I did not see Jagatmohini or any woman".

Swami Onkarnanda formerly called Khetra Babu deposes that he too was called in the morning at about 6 or 6-10 by Jagatmohini, went, found a dead body, wholly covered up, being brought out, saw it placed on a khatia in the yard, taken to the Sasan and there burned, wholly covered up, without any of the rites, and this struck him as peculiar. "Not a single Hindu rite was observed not even a Pinda was offered, I was there till the end, that is, till the cremation was over".

He said also that the man looked tall, the dead body—

and that he could see a little of it, when the cloth shifted at the Stepside and the Sasan, and that he seemed a fair complexioned man.

Ram Singh Subha who had seen the dead body, as I said, at dusk and Dr. B. B. Sirkar, says that in the middle of the night a boy servant of the Kumar woke him up, and said that there was a golmal, but he was too sleepy, and did not go, but went next morning. He was asked by Satya Babu to get a Khat, and things for funeral from the bazar, and he did so and went the procession. He too says that the corpse was never uncovered. To this effect is the testimony of Nalini Chakrabarty. He too went in the morning, and went with the procession, and to the Sasan, and the corpse, so he says, was covered from head to foot, and never exposed even at Sasan, and burnt in that state, without a single rite.

Of these witnesses Nalini has been utterly discredited by his former statement recorded by Mr. N. K. Roy during the course of the inquiry at Darjeeling I mentioned. It will be recollected that before the middle of May 1921 Satya Babu and Rai Bahadur S. C. Ghosh proceeded to get the statements of witnesses taken down by a Magistrate, and one of the statements recorded in that trip was the statement of Khetra Babu aforesaid taken on 17-5-21. Nalini's statement was taken on the 3-6-21 and he had then stated that the body was uncovered, and it was the body of a "stout and strong and fair-complexioned youth;" and to this statement was added 22-6-21 later a postscript; that this was at mid-day. The

witness is gone, though the circumstances under which these statements were taken, what questions were put on the 3rd June, before the printed questionnaire had been framed what things were put into their mouth or what suggested as common ground like "the story of the Sadhu" I mentioned and sent with some questions framed on the 3rd June are not known. One thing however is plain. That less than 11 days after the plaintiff declared his identity the idea had occurred to get this "uncovering of the body" from the witnesses, and to pin them down. In the former statement of Basanta Babu and Khetra Babu however, one does not find any material difference from the present, except that do not say that they there was anything odd ; and they were asked why they had not mentioned it—this odd omission of rites—then in answer to the question No. 9 on the printed interrogatories which unfortunately for the defendants, came to be framed by Mr. R. C. Dutta afterwards, and nobody knew it better then Rai Bahadur, S. C. Ghosh to whom these were shewn for approval by Mr. Dutt, and which came to be used thereafter for further statements.

The evidence on the other side is this : those examined on commission had all gone to the Sasan, and all, except one from the Stepside. The exception, Khetra Mohan Bhattacharjee of the Mall Villa came, so he says too late, so he tried to overtake the procession and could not do it until he arrived at the Sasan, and found the body there. Another, Kanai, came across the procession near the house and did not go into the house.

One part of the case before the trial was that certain

people came before dawn including Rajendra Sett, and Bejoy from the Sanitarium after receiving Satya Babu's chit and Anukul and Shyamapada Babu. And as to those, who came in the morning the stress was upon what was done at the Sasan, rather than on the seeing of the body at the Stepside before the start. This became very prominent at the trial, but it was said then, as now, as an important portion of the transaction in the morning that the wife of Kasiswari Debi, the wife of Mr. M. N. Banerjee, came and her son, Balen, and while the son looked to the arrangements for taking the body, the lady took charge of the Rani in her sorrow. Mr. R. N. Banerjee Barrister-at-law who was the last but two of the Darjeeling witnesses examined on commission the last but two to be examined came to say that he, another son of Kasiswari Debi, was there too that morning, and not only his brother, Balen Babu, and he too took part in the arrangements. He had not been mentioned by any body before, and looking to his evidence, and to the marks of falsehood in it, and the damage he had done to the defendants' case on a certain point, his sister-in-law was examined as the next witness, to support him. She was then a young lady living at Balen Villa a daughter-in-law to Mr. M.N. Banerjee, and she says that she saw the procession go past the Balen Villa, and Mr. R. N. Banerjee in it, which she could not unless it went by the Thorn Road route. This explains why the route of an admitted procession came to be disputed.

Another part of the case, then said, as now, is that the nurse Jagat Mohini not only called people in the

morning which she certainly did but she went to the Sasan with Ganges water, necessary at the last rites. She says that Kasiswari Debi who had come to the house asked her to take off her shoes, and take some Ganges water from the house of the Moharajah of Burdwan, and she went there, and got some water, and went with it to the Sasan, and saw the cremation. And the evidence is that Kasiswari Debi was with the Rani after the party left, and then at about 12, took Rani to her house, and she remained there until the cremating party returned. Mr. R. N. Banerjee says that he left the Sasan after the cremation was over between 4 and 5 on a pony, so that he might be well taken to have come back at 5 P.M. at the earliest looking to the other evidence on the point and the fact that the going down hill takes an hour or more, and he had to come up hill along that awful road. Upon return home he found the Rani still in his house, and she went back with her mother in a rickshaw.

One other fact connected with the morning transaction which the defendants' witnesses are insisting upon is that the body was brought down from the first floor in their view down the wooden staircase which, as I said, is at the end of the roadside verandah facing the rooms. It rises from the verandah below, and piercing the verandah above it goes to the first floor. The rooms open into this verandah and the dead body of the Kumar, if it was in the southernmost room, as I found, or even the next room, will have to be carried the whole length the verandah till one comes up to the head of the stairs, and then down the stairs you will have to descend to the verandah below and come down the whole length of it

till you come out into the yard where the khat lay. The evidence before me is very clear-that the body was brought down the stairs, carried the whole length of the verandah and put down on the khat in the yard. During the commission stage what was being said was that the body was brought out of the inside which is not inconsistent with this, though one or two statements would seem to indicate that the body was brought out of a room on the ground floor.

Mr, R. N. Banerjee gave his evidence on 28-3-33 at Mirzapur where, he said he was on a change. Of the things he was prepared to prove, one was that the Sasan where it was in May 1909 had always been the Sasan at Darjeeling, that the shed there had always been there, that he had seen it there in 1905 or 1906 when he went to cremate Rai Bahadur Das. He was making no mistake, for Rai Bahadur Das did die in 1905 or 1906 as a local witness for the defendants told me (D. W. 411) and as he admits in effect was one of the set who would go to cremate people as a duty which should never be shirked (P. W. 986 Manmatha). He knew perfectly well that the new Sasan was made in 1907, that there was no shed there before, as Anup Babu says (D. W. 411) and he knew perfectly well, that the old Sasan was there, and he told the Court the Sasan where the Kumar was cremated has a shed in 1905 or 1906, and he found it in 1909 exactly the same leaving that aside, one finds in his evidence a certain off hand manner which flows from the truth, but which cannot long be affected. Mr. Banerjee gives to whatever he says a touch of circumstance, volunteers details such as people not

telling the truth 'are apt to give to excite belief. Some of these gave him away. He says that he would call at the Stepside with his mother, and go upstairs and speak to the Rani, but did not know the Kumar except by sight. He was about 17, and the Rani a little over 19, and he did not know the Bhowal custom when he thought that would pass. Even at Darjeeling the Rani would not stir out except at night, and even then in a rickshaw, and she would not appear even before men-servants except Bepin who was young. The Kumar, he says was more or less ill, but he was too young to know if it was the effect of drink or illness a slight support to the 14 days' illness that Dr. Calvert's certificate required and found its way in Morel's evidence. The throws in "stomach-pain" when he was calling he had heard about it from his mother throughout his illness he was suffering from certain stomach troubles, he says and the mother sending all kinds of fruits "to tempt an invalid's palate during the 2 or 3 days before his death". He had thrown in a conversation in the High Court when somebody spoke of the plaintiff's claim sometime before 1924 and when he contradicted the rumour that the plaintiff is the 2nd Kumar, and another conversation in 1924 or 1925 when this claim was mentioned, he observed "I personally had attended the Kumar's cremation". Knowing so much about the case and its needs, what he did when he received a letter from the Collector on 2-12-32 saying that his statement was wanted on a certain matter was that he went to the Deputy Collector, saw the interrogatories, had a date fixed for answering them, and feeling curious to know "where the parties belonged to", proceeded to Calcutta, got some information from his brother, went

back, and answered the interrogatories on the fixed date.

The one detail that gave him away more than the single Sasan and the protracted illness occurs in his account of what took place on the morning on the 9th. He was there to help, and his mother had come, and the body of the Kumar brought down. How it was brought down he describes. Balen Babu and the witness ascended by some cement steps by the side of the house got a glimpse of the Town nurse Jagatmohini Dasi, came to a verandah built against the bill on "the eastern" side of the house, found some people upstairs, and the body was in a room upstairs and other people came up and one Rithe also. This Rithe is another of his details, and he says he came up to unscrew a tin partition which blocked half the verandah-so as to 'facilitate the taking down of the body by the cement staircase'. I was sometimes upstairs, sometimes downstairs, telling Rithe to unscrew partition and helping." A Khatia he says was procured from Mr. Warnicle's Munsif (Ram Singha Subha), and it was placed 'at the foot of the cement stairs', and he was standing at the foot of the stairs when the body was being brought down, i. e. 'in the compound' below. It is perfectly clear that he was referring to the what I called the sloping path that led to the front room the path that ended in the compound, and that makes an end of his evidence, for the other witnesses all saw the body being brought down, as they say, the wooden stairs that came down to the far end of the enclosed verandah. An attempt was made to repair the mischief by calling a witness called Kalu Chhattri, the present Chaukidar of the Step-

aside, who says that on the middle of the enclosed verandah in the first floor there was a door—a curious place for a door this fits the unscrewing though it does not fit the cement steps ending in the compound, and this witness Kali Chhatri added that at that time he was residing at the servants' quarters in the Peacotip and saw the Kumar's body being placed at the khat, and taken away. It runs out that this man was in jail for three years from 6. 8. 97 for an offence under sec. 457 I. P. C. and it also appears that he had five previous convictions under sec. 380, 381 I.P.C. etc. and had also been whipped in connection with those offences (Bx. 345). He came to depose to a fact that took place while he was in jail, with the leave of Anup Goswami. D. W. 411, who says that he would not deny that this man was in jail, but who in his zeal for tadbir, did not draw a line even at this man.

I do not believe that Mr. R.N. Banerjee was there that morning at all, and this need not appear from his cement staircase alone. It is impossible to go into the evidence of every witness, or to point out the marks of untruth in each making every allowance for the lapse of time, such as the statement of a witness that the face of the dead man as he lay on the khat was rosy, or that from the gate the body descending from the staircase could be seen from the Gate, despite the curve on the road, of that the whole account of the illness biliary colic included was collected there in the compound and so forth. It is enough to state a few broad facts that put an end to the whole case so far it is sought to be proved that the body was exposed, and not covered up, or that the usual rites were performed at the Sasan.

(1) It is perfectly clear that not a soul had come at night, after 9 P. M. Shyama Pada says that at about 1 or 1-30 A. M. he got a slip from Satyen saying, 'Kumar expired, Come with Brahmins for the last rites. He came with Anukul, and went upstairs, found the 2nd Rani crying, as she lay putting her mouth over the mouth of the corpse. The nurses were not there, but these were elsewhere probably downstairs, not upstairs at all, and Dr. Nibaran too was staying on though according to Satya Babu he had melted away. Rajendra Sett and Bejoy say they got the slip at the Sanitarium at about 1 o'clock and came out with Bijay and on their way, they went to the Cutcharee Building to call men, and some came out and they all came to the Stepside, not before 3 A. M. and there was a discussion whether the body should be taken out before dawn, and eventually decided that it would be done after it was light. All this case has vanished. Nobody says that anybody came at night, and Satya Babu says somewhat faintheartedly that some people came at about 3 A. M., but he had sent the chits not to have men to carry the body but to give the news. His diary belies him. Under the date 8th he begins by recording Kumar Ramendra expired midnight', and then he says about the doctors, "melting away" and records his sending to Sanitarium for men to carry the corpse, and sending to his maternal uncle, and notes that his maternal uncle came at about 3 in the morning under the 9th records.

Sett with men from Sanitarium arrived, M. N. Banerjee's son Balen, Phatik, Shyama Das arrived. With difficulty removed the body covered in silks, shawl

and flowers. Rs. 200 distributed to the poor on the way to the funeral ground, Sejomama remained with Bibha at Stepside. Self accompanied the body. The fire was set by Birendra. Returned at about 2 P. M.

Phatik is another name for Anukul. Bibha is the 2nd Rani. These people came in the morning Mr. R. N. Banerjee or his mother was not there. And this is concluded by another fact which I shall mention below.

(2) The procession in the morning was made as public as possible, pice scattered, and reversed arms, and so forth though this sort of thing is usually done in the case of rich people who die full of years, and not in the case of a sudden, strange, calamitous death of a youth, however rich. On this day there was a Sradh at Kurseong and most of the local residents were away they had gone by the 6 O'clock train and the evidence is that Mr. R. N. Banerjee had gone too-but there were the clerks, and they came, and some of the local residents too. It was the Bazar day at Darjeeling a Sunday. I suspect that names of those who attended were taken down just as Dr. Calvert's condolence-letter was secured, and the diary opened, though it is now being called not contemporaneous, so as to leave a loophole for things-or the Darjeeling inquiry could not begin, or proceed in the manner it did, but Satya Babu took one false step. His anxiety for evidenece carried him too far. Just opposite the Stepside was the Mall Villa, and in that house was staying Dr. Pran Kristo Acharya whose name has been uttered with respect by everybody, and who was a renowned doctor of Calcutta. Nurse Jagat

Mohini who went about that morning calling people, called upon Dr. Pran Kristo Acharya, and what happened Dr. Acharya said in a letter to Mr. Lindsay in 1921 when a questionnaire was sent to him to Mussuri :

H. M. the Moharajah
of Nabha
Mussuri
24. 8. 21.

Dear Sir,

I beg to acknowledge your letter No. 133 W. C. I have tried to answer your question as best I can. But I have forgotten all about the incident, and my answers are mostly in the negative.

Answers :

1. Yes.

2. Yes.

3. I was present at Stepside the house of the Kumar a few minutes after death. I was not with the funeral procession, nor at the cremation.

4. No, Yes. I have altogether forgotten his features.

5. No, No, No.

9. Cannot say.

7. No.

8. I cannot say who was present at death. I saw sons of Mr. N. Banerjee Govt. pleader making arrangement for cremation. P. 9. Though I was the first

medical man who arrived immediately after death the relatives did not want to know from me if the life was extinct. I remember this as it appeared to me a little strange.

Yours truly,

J. H. Lindsay.

Dr. Acharya has deposed in this case on commission and this letter was put to him by the defence. It does not affect his present testimony in the least. He says that he was at Tea, and the sun had risen when a nurse, whom he did not know, called him saying that the Kumar was dying, or dead. 'come and see him once' she said, but whether she said dying, or dead, he the witness, does not remember. He reached the Stepside at about 6 P. M. and saw a dead body wholly covered. He could not say whose it was. He tried to see if he was dead, tried to examine the heart. As I went near, people present said. "It is the corpse of a Hindu. Don't touch him". The dead body was on a khat but this is his impression.

In cross examination the suggestion was that he, being a Brahmo. would not be allowed to touch the body of a Brahmin, and the witness was asked whether he knew the custom of Bhowal Raj family when he gave instance where he touched the body of Brahmin or other high-born people after death. And it was elicited from him that it was a custom not to allow Brahmos to carry the dead body after death. The whole point is why he was called to see the body, and then sent away.

He was useless for cremation purposes. No doctor would officiously want to see a dead body. Dr. Acharya saw the dead body wholly covered up. If it lay on a khat it was not upstairs. The Kumar lay "dead" on the floor. As the Doctor's memory as to the khat is not exact, it is not possible to say on this ground alone that the body was downstairs, but look to the evidence of the inmates that the body was brought downstairs at 7-30 or 8 A. M. which is the time indicated, and spoken to by the witnesses who came in the morning. And the Rani was clinging to the body till it was snatched from her, and taken away. She did not see Dr. Pran Krishto Acharjya, nobody recollects this visit by the doctor and it was most unquestionably a fact. The whole story about the body being upstairs till 8 and the Rani clasping till it was taken away is false. One gets glimpse of the truth in some of the commission witnesses. Mahendra Banerjee says that body was brought out of a room adjoining the verandah—he was on the verandah downstairs and Bejoy says that he was seated in another room and the body passed through the room in which he was seated. It is perfectly clear that the body was in a room downstairs. Anthony Morel says that the body was brought down, and placed on a khat at the foot of the staircase inside the verandah, while the present evidence is it was borne along the verandah on the ground floor and placed on the khat out in the yard.

(2) There is another fact which shews that the story about the body being upstairs, clasped by the Rani, until taken down by people at about 7-30 or 8 is an utter falsehood. It is said that Kasiswari Debi was there at the time,

and it was she who took care of the Rani at the moment and a great deal of the account of that day is bound up with her down to the Jagatmohini Dasi carrying the Ganges water. Now Kasiswari Debi was not there at all that morning. When the body was taken away the 2nd Rani remained in the care of Surya Babu, the maternal uncle, so says the Diary. It does not mention Kasiswari Debi, at all. But one need not decide the point on the Diary alone though that, in my opinion, is enough. Bepin, the Khansama, has given a rather vivid description of what took place after the funeral party had left. After saying how the Rani had been clasping the corpse, and Kasiswari Debi and Surya Babu took her from it by force, he says :

“The Rani was taken by all to her bedroom. There the Rani began to fling from her body her ornaments. I picked up these, and put them at a corner of the bed. Those ornaments which she could not take off, remained on her. The G. P’s wife then took her to the bathroom for giving her a bath. She bathed there, and then the rest of her ornaments, taken off in the bathroom, were handed to me. These and those taken off before I tied in a handkerchief. G. P’s wife handed to her maternal uncle the ornaments which I had tied in the handkerchief.”

Then she, Kasiswari Debi, took her to her house. When I was listening to this evidence I was wondering how this lady could permit the young girl to take off all her ornaments at that moment, for ordinarily, on an occasion like this, a girl in the first burst of sorrow not

unmixed perhaps with a desire for sympathy, would try to throw away the ornaments, and the elderly ladies would insist upon her keeping them that is the sort of thing that takes place, and it does not, in any case, take place before the cremating party returns ; till then there is hope, and no widowhood. Bepin, in answer to my question, admitted this custom, though he tried to deny it at once, but when I was thinking rather hard of this lady Kasiswari Debi for whom every body had a good word, I was doing her an injustice. The Rani certainly went to her house that day, but not with her. She went with Surya Narayan Babu who was living at the Balen Villa as a tenant, without family, and so he naturally put the Rani among the women in the house. Gita Debi was one of them. She was then a daughter-in-law in the house, and she thus describes what took place when the Rani came, without a trinket on her, and wearing an ordinary dhuti such as servants wear.

“The Rani wept. I am leaving my all in the hills she said. She had on an imported dhuti such as servants wear. There were no ornaments on her person. Mother said : Child, you have taken off your ornaments so soon ? The Rani said ‘He would not allow me to take off one-no one forbids me to-day’ Saying this, she wept. When she was composed a little mother asked,

How could it happen so suddenly ?

The Rani most probably said that Dr. Calvert was treating him. Mother said.

You are alone. Couldn’t you inform the brothers ?

Rani said : They were informed. Even yesterday came a telegram saying, "Save him, no matter what money it costs."

I believe every word of this evidence. It has the ring of truth. There is no mistaking it. Whoever connected the tale about Kasiswari Debi and laid it at the Stepside that morning, knew nothing of women. The very fact that the Rani threw away all her ornaments, and came dressed like a servant is proof that there was no other lady there.

(3) With Kasiswari Debi goes off most of the tale.

This Jagatmohini, Nurse, for instance, carrying the Ganges water to the Sasan. "Kasiswari Debi sent for me and asked me to take off my shoes, and to get some Ganges water. from the Rose Banks, and take it to Sasan. She was not there. The defendants went so far as to make this woman say that she was a Brahmin, and a Chakrovarty. No Brahmin woman would call herself Dasi, as she admits she did. She had to tell falsehood after falsehood to sustain this tale, but her answers shew that she is not a Hindu at all. She could not give the surname of her mother's brother, though she mentions him-she had only heard where her father's home was. She admits that she passed out of the Dacca Hospital as midwife, and lived at Bansibazar. Witnesses who knew her say that she was the mistress of a Mahomedan and lived like a Mahomedan, and the books shewing the rent paid for the house she lived in a bad quarter have also been produced by the landlords' agents. (P. W. 823, 847, 985, 1017, 1016, 1031). It is enough to

read her deposition to see that her invention failed, and if she were what she appeared at Darjeeling a nurse in nurse's uniform, it is impossible that any Hindu would choose her to carry the sacred water, or that she, a nurse, would be so asked, and would go to, Sasan.

The fact is that as there were no ceremonies at all, the defendants lost all sense of proportion, and would have them down to the sacred water. The corpse was annointed, bathed, dressed, gold was put at the nine doors of the body, rice was boiled, a chita purak offered, and the mukhagni done, and the pyre washed. This is the account that Birendra and the other witnesses give but where is the priest? In the Sreepur case he said that Ambica, the cook, in the house acted as priest. One of the Darjeeling witness however blunders into saying that one Sasi Babu of Darjeeling officiated as priest and the other witnesses followed suit. Mr. R. N. Banerjee backed them up, and Birendra, confronted with his former statement, says that Ambica read the mantra, and Sasi Babu checked it. Birendra who performed the Mukhagni did not bathe, or bring the water for boiling the pinda. He had to admit that, because of a former statement as to the source of the water. He says he had fever. A falsehood which does not explain why he did not fetch the little water necessary for the pinda. Nothing is impossible, of course, any more than it is impossible for a clergyman to perform a burial service in shirt-sleeves and shorts. Dr. Ashu Tosh did not know before if the priest was a Bengali, or upcountryman (Ex. 395 (1)).

And to this the fact that the party reached the Sasan at about ten, and the rice was boiled, and the other things done, aid one witness adds a little rest after the body is set down, and with an eye to that apparently, the party leaves the Sasan at 4 or 5 P. M. while the diary of Satya Babu says that he returned from the Sasan at 2 P. M. which means that the thing was over by 1 P. M. the return journey was uphill, and the down journey takes an hour, but Mr. R. N. Banerjee leaves the Sasan at 4 to 5. And the evidence of Gita Debi that she saw the procession pass the Ballen Villa and Mr. R. N. Mukerjee in it, cannot establish what the facts exclude, and her statement on this point is no more true than her statement that when the family heard of the return of the alleged Bhowal Kumar, her mother-in-law, and her brother-in-law, Ballen Babu, talkod about it, and Balen Babu said : "I would go and give evidence. He died in my presence". It appears from the evidence of Mr. R. N. Banerjee that his mother had died in 1919 and Balen Babu in 1918. Not one witness had mentioned him though he was a well known figure even in the Cutcharee Building and took a most prominent part in the affair. Satya Babu's diary does not mentioned him though it mentions his brother, his own evidence internally shews his absence, and the Thorn Road route is an after thought to fit in Geeta Debi. It was suggested first to Basanta Babu, that the route was the Thorn Road route, and that he had not answered the question about the rouse in the printed interrogatories which, as I said had not come into existence when this witness was examined on 2. 6. 21 (z340). It would be a longer and round about way, as will

appear from the witnesses on the side of the defendants, and will be through the Hospital Road where processions were not usually permitted as a doctor who was once incharge, and who still lives at Darjeeling has said. Birendra had said before that the procession passed between the Bazar and the Railway station, after the crossing the Chowrasta. That means the Commercial Row route (Ex. 350).

The two European witnesses, the confectioner and the Municipal employee, came to prove two things ; that the route was the Thorn Road Route, and that the Kumar went about in English clothes talked English and ordered lunches, and played billiards-things need after the plaintiff's cross-examination. The witnesses who came to speak of this include Ashu Doctor and Birendra. In his previous testimony Birendra had said that "He (Kumar) used to wear cloth by doubling the same like lungi. He went to Darjeeling in this dress, and remained at Darjeeling in this dress. Occasionally he used European costum"-and this last speaking about his dress generally. And Ashu doctor had said "After going to Darjeeling the Kumar did not much stir out ; he only walked a little within the compound of the house" (Ex. 394 (16). Two witnesses for the plaintiff who saw him out of doors at Darjeeling saw him on bright lungi which he used to affect. Rajendra Sett for the defdts saw him in this dress in the house ; and saw Satya Babu going about in English clothes, with a gold-embroidered cap on his head, and affecting English speech. It was he who was going about as Kumar, and the need of the

case after the plaintiff's examination led to the evidence to prove a lunch-eating, billard—playing Kumar, in glowing health, even though it cost the 14th days' illness that the affidavit of Dr. Calvert had put into the mouth of Anthony Moral. I should say one word about two witnesses though the broad grounds I mentioned are enough to shew that they were not telling the truth about what took place at the Sasan on the 9th morning, and about the nature of the procession. One of them is Babu Haran Chandra Chakladar. His evidence is that he went to the Stepside on the 9th morning, as a man had come to the Sanitarium in the morning for men; that he went, and joined the procession, and went to the Sasan, and saw the cremation, and the usual rites—the body bathed and so forth. He denies what Mr. Lindsay affirms that he had not answered the interrogatories that were being sent to the witnesses. Mr. Lindsay was therefore taken to him by Satya Babu on 16.9.21 and to him he made a statement, but he would not allow Mr. Lindsay to take it down, much less sing it. He did not want to be bound down, so he says. I notice he was then living in a hut so he says. Mr. Lindsay notes that Satya Babu who took him there did not know the house—another instance of unfitness to deal with cunning; and he was told also that the witnesses name was known all over Bengal. He is of course nothing of the kind. Internally, his evidence shews one sure mark of falsehood. He did not know, and had nothing to do with the Kumar, but he says he went to see him with a man who is of course dead. He says he went to see him, 5 or 6 days before his death, heard he was ill, heard it was colic, not very serious, and met the

Kumar in the outer room. He had heard of his illness from time to time before that—it was pain in the stomach. He was supporting the case in vogue, now obsolete, that the Kumar was continually ill. And this witness who refused to be bound by any writing added that the note that Mr. Lindsay had in his absence, made of the interview (Ex. Z 359) was shewn to him before he deposed, and he suggests that it was sent to him by the plaintiff through his own nephew; as though the plaintiff wanted him to be consistent.

I need scarcely say anything about Dr. S. C. Roy whose evidence speaks for itself. I do not believe a word of it.

I find that Basanta Babu, and Onkarananda Swami, spoke the truth. The body was covered up, and carried in procession, and burnt as quickly possible without a single rite. I rest the conclusion on the single fact—that the Kumar had died at a little after dusk; and an examination of the evidence touching the proceeding on this day confirm that conclusion other-wise reached. This explains the unusual procession, the calling of Dr. Acharyee to see the body, the appearance of obituary notice sent by “Our own correspondent from Darjeeling” on the 9th mentioning midnight as the hour of death and the disease “fever with loss of blood and pain in the abdomen, the condolence letter being taken the next day, when colic” first appears, the promise of a sum of a money for the cremation ground, and the opening of a diary with midnight as the hour of death. Nobody now knows

who had promised the money, but Mr. Canda of the Sanitarium came to know of it, and opened correspondence (Z 124) with the 1st Kumar to say that the Sanitarium deserved money more, and that he was going to hold a condolence meeting, apparently to earn it. After correspondence was put in, this meeting ceased to be urged, and the proceedings of that meeting shew that Mr. Haran Chandra Chakiadar was not there though he falsely says he was though even a "Youngster" who attended occurs there (Z114, 115. 118).

The certificates of cremation taken with a view to the life insurance money (Z 202 and Z 220) do not take one further than the cremation of a body of the 9th one of these is by Satya, and purports to be also by Cabral, though the signature of Cabral looks extremely suspicious, this Cabral was at Darjeeling, and every one of the Darjeeling party must have known what was happening, but believing that the death was a fact, they would not mind a faked cremation to save themselves from reproach at Jaidebpur. They could hardly face the family, and say that the Kumar had not been cremated, but apparently they talked and thus arose, I find now, the talk of Kusputtalika at Sradh, and unless this happened, it is hardly likely that the Rani Satyabhama Debi would write to Moharajah of Burdwan to inquire in 1917, and mention the fact in the letter of 1922 to the 2nd Rani.

During the trial the defendants got a farmer employee to produce an order to close the offices on account of the death mentioning midnight as the hour of death, and they

called Rai Saheb Umes Chandra Dhar, a member of the School Committee of the Kaligunge School, to depose to a condolence resolution mentioning this hour. (Z 154 and Z 224). Rai Saheb had—during his examination on commission that before condolence meeting he got the hour from a telegram shewn to him by the local naib, and changed that when he saw from a question that there was then no telegraph office at Kaligunge ; and to this meeting and the proceedings no other member speaks, and it was not put to a member who had deposed for the plaintiff (Parsa Nath Biswas). Rai Saheb is obviously a man under the defeedants' control, his relations are employees under the estate, and he himself was utilised in sending to the Collector a 'resolution' of a fictitious meeting to which nobody else has spoken, not even Phani Babu, though his name is on the proceedings to shew that there was opinion against the Sadhu (Ex. 223) ; but the best answer to this condolence resolution is the facts which prove the apparent death at after dusk, including the withholding of the telegram ; and as to the order closing the offices, the answer is the same, even if the former employee who brought it could explain how the order should be with him, and not in the office. Nothing in the papers in the possession of the estate have been produced to shew that Jaidebpur knew midnight at the hour of death, except, an entry 'he had died at night', assuming

that entry is genuine. Bengalee call dusk to dawn night, as Satya Babu says. There is an entry that the 2nd Kumar's *asthi* was sent to the Ganges which only proves that some ashes were brought as his—though Birendra calls is a piece of bone and Mr. R. N. Banerjee suggests the navel, 'the rubber-like substance' he calls it—but that does not carry one further than the cremation of a body. I should add that Mr. J. N. Gupta I. C. S. wrote in connection with a proposal for a memorial temple for the Kumar that the ashes of the 2nd Kumar had not been brought, and this he was writing after hearing a question that had risen. It might be his guess but all these facts are swept away by the facts I gave, which shew that the apparent death was at night, and the body was taken out at night.

My conclusion on this topic is that nothing repels the conclusion touching the identity of the plaintiff with the 2nd Kumar. That rests upon evidence, including marks which I have set forth, and which are admitted or incontrovertible. The Kumar's apparent death occurred between 7 and 8, his body was taken to the Sasan at about ten, and this body was never cremated. It is nobody's case, and Satya Babu says that it is not a fact, that this body was found, and brought back, and carried to the Sasan the next morning. If the identity has been proved with

mathematical certainty, it cannot be displaced by the cremation in the morning of a substituted body. Every body appreciates its extreme improbability, but it can not displace the identity, and the facts connected with it, and the lies told about it—Kasiswari Debi and her alleged part in it and the rites and all the rest—and the fact that less than 10 days after the declaration of identity by the plaintiff Satya Babu goes to Darjeeling to pin the witnesses down, shew that it was not a normal funeral at all. No improbability arises from Satya Babu's youth, looking to his proceedings that followed, and that are in his diary. Of these I have given an account above.

The fact that the body was left at the Sasan during the rain, and disappeared is no proof that it was alive, and the real proof of that is that the plaintiff is the same man, looking to his body, its features and marks, and to the evidence of people who say that he is the same man, and whose evidence has stood the tests I applied, and need not accepted on the ground of credibility alone though I should be prepared to do so. I must however state the evidence given to shew that the body was alive, and the Kumar was rescued by four Sannyasis who took him away, and with whom he lived for nearly 12 years until he came to Dacca. Nobody will accept this evidence, or accept it as proof of identity, if it were not otherwise proved,

but granted the identity, there would be no reason to reject it.

The plaintiff says that after he became unconscious at the Stepside he found himself, as he returned to consciousness in a hut, and among four Sannyasis who nursed him, and took care of him until he left Darjeeling in their company. He says that those Sannyasis were Dharma Das Naga who later became his guru, and three others, Pitam Das, Lok Das and Darsan Das, all Nagas, and full fledged Sannyasis. I shall come to this part of the story soon but Darsan Das, one of the Sannyasis, has given us an account of the rescue. It rests on his testimony alone, corroborated at its sequel by three witnesses, and it can no more prove the identity than the testimony of many of the numerous witnesses on the plaintiff's side, unchecked by facts resting on nobody's credibility alone. But given the identity, otherwise proved, the account is clear, and consistent, and unshaken by cross examination, though this illiterate Sadhu was laying his story at a spot which nobody who has not been at Darjeeling would grasp in its details. It may be that this witness has been taken to the spot, and has been tutored by somebody. Even then, I would expect such a witness would break down. He did not. He stood cool, and collected in the box, and gave his account,

with the air of a man speaking from memory, and the memory of an illiterate man for detail.

His account is this : He and Dharma Das Naga, the plaintiff's guru, are chelas of the same guru, Harnam Das, a Punjabi, and they with two other Sannyasis came in the course of their wanderings to Darjeeling. They, these four Sannyasis would pass the day in the Bazar, but the night they wanted to pass in a secluded spot, and for this purpose, they chose a sort of cave made by boulders to the west of the old Sasan. What happened one day may be started in his own word.

"At Darjeeling while we were there took place a strange thing. One day at night, after—a prohar of the night was past we were seated, talking religious matters, when we saw a cloud in the sky. A little after rain started falling in drops. At that time I heard the cry of "haribol", "haribol". Bawa Loknath Ji said : "Neki, get out and see". He was considerably my senior, and used to call me Niku. I got out and saw a lot of people. I saw the light of lanterns which were among those people.

Babaji asked : what do you see ?

I said : A great many men ? He said : A great many men ? "What could you do ? Came in". I got in.

The wind was blowing hard, and the sky overcast, We sat down to take the name of God. It got late when Babaji told me: There was a great crowd of haribol outside, but we don't hear anything...

now. One Sadhu should go out and see. I went out, and saw that there was no wind, but rain was falling. I heard a sound in the Sasan. I waited. I heard a sound again. I waited. I heard a sound again. Then I told Babaji "There is some sound—He said : What sound ? I said ; "I do not know. Please come out".

Baba Loknath Das came out, and said : Where is the noise ? That side, eastwards, I said. Babaji said : Get the lantern quick.

I took the lantern out and Babaji Lok Das said : Come with me. We two went to the Sasan. Loknath asked me to bring the lantern. I shewed it over a manja upon which was a man. Babaji said: Hold the lantern thus. I held it thus (Shows) Babaji said: I am opening it. Babaji took the cloth from the side of the head, he pushed the cloth towards the feet,—after unfastening the cloth. Underneath that was another cloth tied round the man by a rope like a mosarir dari (ourtain string). The upper cloth was fastened to the legs of the Manja. Babaji pushed back the upper cover and he opened

the cover underneath. The Babaji put his hand over the man's mouth (shows hand over mouth and nose). The Babaji Said : 'Neku, this man is living.'

He said : call the other Sadhu. He, Loknath, stayed on and I went to call the other Sadhu. I said to the Sadhu : 'Babaji wants you'. So the two other Sadhus came with us. Babaji Loknath said : 'This man is alive. Where would you take him ? We have very little room as it is. Very well, take him'. We left the clothes covering the body there. Babaji said quick, it is raining. When we carried the body the man was shaking like this (shows) with cold, and at times uttering a sound like hun hun (faint groan). We took him down hill to where we were living. Babaji Lok Das said : 'He is shaking with cold. Take off his clothes'. He had genji and other things on and these were wet. He, Babaji, said : Put a dry cloth round him. I did so. Babaji said : 'Put a blanket round him'. Then Babaji said : 'Take him to the ghur below meaning a ghur further down hill which was there'.

Babaji said : It is raining hard. His cloth will get wet again. Take a 2nd blanket.

"Then we four Sadhus took the man-three of us held him as we proceeded, and Pitam Das who was feeble-

bodied carried the lantern, and the tongs, ahead. We took him to the ghur but it was locked up. Baba Lok Das said : 'It is raining. You can't get the key. Open it by the chinta,' By the chimta the chain was wrenched open, though the padlock was untouched.

We got into the room. We had the lantern and found a manja inside. Baba Lok Das said : Put the man on the manja. We would lie on the floor.....

And the account goes on in this fashion, and gets richer in the detail in cross-examination, breaking down nowhere, not even on points of topography in so difficult a part of Darjeeling changed out of recognition since 1912 when the new Sudhir Kumar Road was opened, all trace of the Sasan gone. The man denies that he had been to Darjeeling after this incident, and seemed incapable of grasping a map. His account reads like a fairy-tale and if the plaintiff needed it to establish his identity he would fail, for it can no more be found on this testimony that he is the Kumar.

The rest of the account may be briefly stated. The Sannyasis stayed in the hut to which they had removed the man they had found for a day, was seen by the owner of the hut the next morning, and was supplied with a blanket from a sort of factory for making blankets and

Kabiraji medicines, but as people started coming, they left carrying the man, still unconscious to another hut further down. There they stayed for some 14 or 15 days, and left Darjeeling. The man they had found returned to consciousness 2 or 3 days after he had been rescued, but was behaving like a boba or idiot, though when he returned to consciousness he asked where he was.

Three witnesses support in part of this testimony. These are Girija Bhusan Roy, a contractor and timber merchant, doing business in Calcutta, Sris Gupta, Kabiraj and a relation of his and Bejoy, another relation of his. Girija Babu says that his maternal uncle, a retired Govt, officer at Darjeeling, kept at Judge Bazar a Kabiraj-shop, and for making the drugs he had a factory-a four-roomed hut-on the path leading down to Sunderbong at a point to the west of the old Sasan Sris Babu, then not related to him, was in charge of this drug factory and in one of the rooms in the hut lived this Sris Babu, and in another Girija Babu kept a loom or something to make pattess and blankets. Close to this hut was another hut a sort of out-house or Godown. Girija Babu lived at Darjeeling from 1906 to 1918. He says that on being informed of something he went, and found four Sanyasis

in his godown, and there was another man who lay sick, and who, the Sannyasis said, was one of them, and whose illness the Sannyasis mentioned as an excuse for getting into the hut. He did not take any particular notice of the sick man who lay in the khatia, and looked unconscious. The witness at the request of the Sannyasis, gave them a blanket, and assured them that they might stay there as long as they liked. This account too is very circumstantial, and is corroborated by the Kabiraj in charge of the factory, and by Bejay who was not a resident of Darjeeling but was paying him a visit. Girija Babu indicates the position of the factory as between the garden of a Saheb, and certain terraced fields for cultivation, these last to the west, and it is on the road to-Sunderbong. He says that the house was on a land held under the Moharaja of Burdwan, and one way of going to it was by a zigzag path from a point on the Cart Road. That point is on the right of the Rose Banks, and you go down the zigzag path, get to a point where stood the house of one Giris Babu—it is called the Town-End and from that point a patch to Suderbong, and on that path lay this factory. He indicates its position as somewhere near the the letter N in the map and the house of Giris Babu somewhere near the point M which shows that he is mistaking at least about one point, viz: the latter. The defendants led evidence to show that:

there was no hut at the spot where this *Karkhana* is being placed, that the Moharajh of Burdwan had no land there, that the road to Suderbong is south of the Kagjhora—the Kapur Road, so that one could not come to the Karkhan, supposing it existed, without crossing the Kagahora, and Girija Babu does not say he had to cross it, except a branch of it and Darsan 'Das does not say that he crossed the Kagahora when he came to the first hut. The point is extremely obscure, no contemporarous map has been produced, except the map made for the limited purpose of the lease to Mr. Morgeinstein, and that would shew nothing except what this purpose needed. The defendants have called three witnesses to show that there was no hut or house between the Kagahora and Benguin Jhora in 1909. One of them Mr. Morgeinstein who was then barely ten, and the moment he spoke of the old Shudhir Kumari Road going past the new Sasan, and going up to the tannery on the west (vide map 411, and the map X459 for indentification) he spoke of what came into existence later as I pointed out from the proceedings of the Burning and Burial Committee, and from the evidence of the Municipal surveyor, Shamsuddin. The owner of the Town End who deposed long before this point arose had said that his house is to the south of the Kagahora, and the Sasan some 150 or 100 yards from

the house. A recent map of Darjeeling produced after these Girija Babu had left. I have some doubt whether the Town End is the house marked Z350 as Anup Babu (D. W. 411) says, seeing that the house he points out is more than 500 yards from the Sasan, but assuming it is there—there is no question that it was south of the Kagahora—one might well cross the Kagjhora there on foot, as people used to before the bridge was made some time after 1912. by going up and going down the slopes, and these slopes had themselves paths on them, as Anup Babu admits, and the water, even further down Kagjhora, is shallow, In any case the point is obscure, as I said, and I cannot say that the account is excluded by any fact clearly proved, or that anything in it displaces the identity, though it will not prove it. I should add that this Darsan Das who, it was suggested, was a man picked up somewhere to tell a tale, and who, it was suggested, was a man in a photo file in court—he denied it—came afterwards to be admitted as a fellow-chela of Dharmadas indeed, and the account that he gave of himself, and his home, and his guru, Harnam Das, was quietly adopted by a man who came to give evidence in this Court as Dharma Das Naga, the Guru of the plaintiff. To that topic I shall come immediately after the next.

MAY 1909 TO DECEMBER 1920—LIFE AS SANYASI.

The Kumar was not heard of, and his whereabouts were not known, during this period and nobody had acted on the footing that he was alive, though there was a rumour that he was living. I described above the transactions during this period which show that his death was an accepted fact. The account that the plaintiff gives of this period of his life rests on his testimony and on that of Darsan Das, but it discloses nothing that shakes the conclusion otherwise reached, and not on the strength of this account, that he is the same man as the Kumar. His account in brief is this :

He regained his consciousness in a hut in the middle of Jungle and hill and found himself among Sanyasis—the four Sanyasis he names—"I was at this place for 15 or 16 days. During that period I had no talk with the Sanyasis. I do not remember what happened after that. I went with the Sanyasis. We went on foot, and also by rail. The next thing I remember is that I was at Benares, at Ashighat, Benares. The four Sanyasis were with me still. At Ashighat we stayed in a Sanyasi's asram. We met other up-country and Bengali Sadhus. I met two Bengali Sadhus. I spoke to them. I spoke to them in Bengali. I spoke to the up country Sadhus in Hindi. I was speaking to the four Sanyasis I mentioned in Hindi, and they spoke to me in Hindi too. At this time I had lost all memory of who I was."

The rest of this period of his wanderings of his life was wandering from place to place, from shrine to shrine in the company of the four Sadhus. In the course of his wanderings he arrived at Amarnath in Kashmir. This was

four years after Ashghat. At Amarnath he took mantra, and became the disciple of his Guru, Dharam Das Naga, one of the four Sanyasis in whose company he was and the name of his guru was tatooed on his arm at Sreenagore-Bazar by a tatoo-man. From Sreenagore he passed from place to place, other long course of wanderings, till he came to Nepal. From Pashupatinath in Nepal he went to Tibbet, returned to Nepal, stayed there for a year, but before he left Nepal, something took place at Brahochhatr where he was stopping with the same four Sanyasis,

“Here I recollected my home was at Dacca.”

He was asked to describe his mental state before this event, and what he says is that upto Ashghat he was unconscious”. Even at Amarnath “I could not recall who I was or where my home was. I used to think in my mind as to where my home was, and where my relations were.” He had a talk with his guru after the mantra, and he recollected that he was found in a wet condition at Darjeeling Sasan. And when he thought of who he was, and who his relations were, would cross his mind he would speak to his guru and he would say : “I shall send you home when the proper time comes.” He understood that if he could renounce the maya of the world, and of his home, and came back to him, guru would initiate him into Sanyas. Then, when at Brahochhatr his memory awoke to the extent that he could recall that his home was at Dacca, he was asked to go home, and he set out alone, passed through various places, and arrived at Dacca”. As I got down at Dacca Station I recollected I had come and gone here many a time” and then he found his way, without inquiry, to the Buckland Bund.

Then followed the events I have described. During:

his first visit to Jaidebpur, as he went about it, "all appeared familiar to me". Previously, even at Buckland Bund he could recognise some of the people who would come to him and say : "This is Bhowal Kumar". He indicates that the full memory came to him during his first visit to Jaidebpur.

All this sounds very absurd, but not more so than some of the cases observed, studied, and recorded in authoritative books by scientists; and after the War there came to be established hospitals for treatment of such cases, designated as cases of War-neurosis. No mystery whatever attaches to them, any more than it does to small-pox or itches, and they cannot be rejected on the short ground that to what is called "robust common sense", they are impossible. Either party has called doctors who have studied them. On the side of the plff. has deposed Lt. Col. Hill I.M.S., M.D. (Oxford), M.A. Superintendent, European mental asylum, at Ranchi who says that he has studied mental disorders for 30 years. On the side of the defdts. have deposed Major Dhunjibhoy, I.M.S.M.B.-B.S. (Bomb.), and Major Thomas I.M.S., whom I mentioned before and who had treated shell-shock cases in England. Among other authorities mentioned by Major Dhunjibhoy is Dr. Taylor's Reading in Abnormal Psychology and Mental Hygiene (1927 Ed.). This book has been referred to by both parties, and embodies results obtained by careful observers. I need hardly collect the leading facts from the book for the experts examined before me do not differ as to these, and where they differ, if they at all, I shall indicate. It is agreed that such thing as morbid loss of memory or amnesia may occur apparently without any physical or anatomical lesion. The disorder has to be expressed in mental terms, and is infinite

in its variety. The study of these has hardly gone beyond observation, and some tentative classification, and without a trace of any such things as law from which one could predict how, in a given case, the abnormal mental behaviour would begin, or progress, or end certain main types have been observed. These are : (1) Regression, (2) double or multiple personality. Of Regression, the classical case is that of Rev. Hanna who began to behave one morning as a new-born baby, all knowledge gone, all knowledge of objects, and even of space. This might be called the baby-state. The case has been fully described in Sidis and Goodhart's *Multiple Personality*. This reversion to the state of a new-born baby is an instance of complete amnesia, and complete loss of mental content. It is extremely rare and it is possibly the only case of the kind observed (Sidis and Goodhart's *Multiple Personality*).

Another type is what is called double personality or dissociation of personality. Some looseness of terms, exists for this may be taken also as a kind of regression, but one form of the present type is that a man behaves as a normal man, but has forgotten who he is. Of this the well-known instances are the cases of Rev. Ansel Bourne, and Janet's Rou in his 'Major symptoms of Hysteria' and some of the shell shock cases. Of such cases a variety is what might be called a couple or more of selves living, thinking and feeling, each for a period, and ignorant of each other. These are the cases of Felida and Leoline in James 'Principles of Psychology' the case of Miss Beauchamp in Dr. Prince's. The Dissociation of a Personality (cited in Dr. Taylor's *Abnormal Psychology*, page 459) the case of Patient Worth (Page 451). Leaving aside these cases, Major Thomas's opinion is that the pliff.'s case, taking his own account of it, is a case of double personality—the case of a man who forgot for a

period who he was, but was otherwise normal "dissociated, yet adapted". Rev. Ansel Bourne, for instance, suddenly left home one day, and found himself, two months later, keeping a shop in the town of Pennsylvania in the name of Brown. (see page 186 of Morton Prince's *Dissociation of Personality*). Mr. Charles whose case has been cited in pages 234 and 235 of the same book, found himself, 17 years after the shock of a Railway accident, married, and with four children, and would not believe that he was not 24 which was his age at the time of the accident. Roy, in Janet's book, forgot who he was, followed various occupations, until he awoke four months after. The plff.'s account is that he forgot who he was, and was living among Sanyasis for 12 years, until he recalled that his home was at Dacca, and at Dacca, his old memory gradually returned.

Major Thomas thinks that there are certain things in the plff.'s account which are impossible. If, for the first year, from Darjeeling to Ashghat, he was in the state he describes i.e. not 'conscious and so forth', it was regression, and this could not co-exist with dissociation and adaptation. That is to say, if he was like a baby and like Rev. Hanna, he could not also be like Rev. Ansel Bourne, and keep a shop. Secondly, he would not expect him to recall the secondary personality when he returned to his primary; thirdly such dissociation is not common and almost always occurs in people having a

neuropathic taint, such as hysteria. Major Dhunjibhoy practically gives the same opinion. Lt. Col. Hill who seems to have the largest experience of mental cases sees nothing improbable in the plff.'s account.

As to the opinion that if the plff. was in the baby-state he could not be normal, but dissociated, it is tautology. The plff. does not say he was in the baby-state. He says what that state was, and calls it unconscious, and says also he was cognisant of objects, and such complex objects, as hills and trees, and Sanyasis, and Khats, but he has no recollection of this portion of his experience —Darjeeling to Ashighat. I do not expect him or anybody, to analyse, and state his mental condition, and it would be absurd to take his account literally and seriously, but even taking it, exactly as he describes it, it was not baby-state. That is the extreme limit of regression, and I do not agree with Major Dhunjibhoy that it does not admit of degrees. Major Thomas says :

“During amnesia his adaptation to environment may be of various kinds. I mean we may have an individual going in a more or less confused state of mind, incompletely adapted, or another individual who is absolutely normal with the exception that he is not living his ordinary mental life. We can get all kinds of intermediate stage between the two.

There is no reason or law that the one and the same

individual cannot pass through these stages. On page 308 of Taylor's book occurs an account of "Four cases of regression in Soldiers". Case No. I had regressed to the condition of a child 15 months old, but could light a cigarette. The whole account shows that the regression is a matter of degrees, and the case of Hanna is rare. I quote one passage of great interest (Readings in Abnormal Psychology page 314-15).

"Cases of very complete amnesia were very common among soldiers during the war. I had many such cases under my care. The common Type may be characterized by saying that the patient had forgotten, or could not recollect by any effort of will, any particular facts of his previous experience. A soldier in this condition would be unable to give his name, number of his regiment, to say whether or not he was married, where he had lived, or what his occupation had been, or to describe or state any fact of his former life. But he would retain a general understanding of his surroundings, would use common articles normally, and would use and understand language whether written or spoken, almost normally. Apart from his lack of memory of particular facts, he would behave normally, so that a stranger, seeing him going about, would notice nothing peculiar". As I said before, the observed cases disclose no law. There is no reason why this state could not begin with a little less adaptation, so as to result in a peculiarity, or even idiocy which Darshan

Das mentions. "The types or classical cases" are in the minority. The mass of cases seen are combinations more or less intermediate in Character" (Page 18 of Abnormal Psychology). The cases are baffling, and defy classification and their one trait is lack of uniformity. The amnesic period varies from a few days to a few years, 17 years in a recorded case, the case of Charles W. and as to the opinion, that when you return to normal self, there is oblivion of the abnormal, that was supposed to be the rule, but now does not go beyond a tendency. Rev. Hanna wrote an autobiography of his period of amnesia. The chasm can be bridged by direct recollection (page 87 of Sidis and Goodhart's Multiple Personality. "Amnesia is in no way an essential part of disintegrated personality observes Dr. Prince on page 236 in his Dissociation of a personality. In short, there is no law by which you can exclude the plff.'s account, as you can exclude his flying in the air by gravitation. Even a neuropathic taint is not essential, though fairly common, and there was no inquiry into such taint in the Kumar. Mr. Choudhury reasonably asked why it should be supposed that in the plff.'s case unusual features occurred. The answer is that from Darjeeling to this point the inquiry is not to establish identity, but to see if anything excludes if the identity being established by other facts. If that is proved, there is nothing from Darjeeling to his arrival at Dacca that could shake the conclusion, and given the identity, there will be no reason to reject it.

on the ground that it involves a breach of a law of nature. It involves no such breach.

Is the plff. a Hindusthani?

I should not expect to find a Hindusthani looking like the 2nd Kumar, bearing his bodily marks, practising, before he came to Dacca, how to write the name of the 2nd Kumar, leaving aside the direct evidence, standing every possible test. It is necessary however to examine the evidence given on this point.

The case in the pleading is that the plff. is a Punjabi. The defdts. are not bound to prove more. They are not bound to prove that the plff. is such and such person, but during the trial was made an attempt to prove that he is Mal Singh of Aujla, a village in the district of Lahore in the Punjab.

This specific case is not in the pleading, and it was not put to the plaintiff. He was not asked whether he was not Mal Singh of Aujla, or Sunder Das, the name he came to adopt, according to the case made after the pleading was filed when he was initiated into Sanyas by Dharma Das Naga.

To appreciate the evidence given on the point it is necessary to go back to 1921. The plff. declared his identity on the 4th May. Between the 6th and the 9th. Satya Babu saw Mr. Lethbridge, handed to him the affidavit of death, and asked him to safeguard the evidence:

of death, sent a copy of the affidavit of death to the Collector of Dacca, Mr. Lindsay and wrote his letter to 'the Englishman' at the suggestion of Mr. Lees on the 8th May at the latest, seeing that it appeared on the 9th, and before the 15th he proceeded to Darjeeling to pin down witnesses to the cremation of the 9th May, 1909. On the 29th May, the plff. appeared before Mr. Lindsay and prayed for an inquiry. On the 31st Sub-Inspector Momtajuddin, and Surendra Chakravorty, a steward of the estate, set out for the Punjab to ascertain the identity of the plaintiff. Mr. Lindsay knew, and in fact arranged, this inquiry.

On the 27th June 1921 Surendra Chakravorty sent from the Punjab a report to the Asst. Manager, Bhowal. The report is Ex. Z347. In that report he says in effect.

He, Surendra and Manmohon Babu, the name assumed by Sub-Inspector Momtajuddin, for the purpose of this inquiry, went to Calcutta, and from that place to various places till they arrived at Hardwar. At Hardwar he, Surendra came to know of a Sadhu called Hirananda, who was at Kankhal. "I showed him the photo, and directly it was shown his chela said it was the photo of Santodas, a chela of Dharma Das". The same day he and Sub-Inspector Momtajuddin proceeded to Amritsar, met Hirananda at Sangwalla Akhra at Amritsar, and there showed the photo to Hirananda and his chela Santaram,

and seeing that Santaram said : "It is the photo of Sunderdas Babaji, the disciple of Dharmadas."

"Then, the report goes on, he and Sub-Inspector Montajuddin proceeded to Chhoto Sansara, 20 miles from Amritsar, and there met Dharma Das. They had been informed that Dharma Das lived there.

"Directly he, Dharam Das, saw the photo of Jaidebpur Sadhu (Sunder Das) he knew him, and at the same time Deba Das, another chela of Dharma Das, knew him too, and both said his name was Sunder Das. "About 15 years ago Narain Singh, of Aujla in Lahore brought Sunder Das to Dharmadas, and got him, then 15, initiated as his disciple. Sunderdas' parents are dead. Narain Singh lives at Chak 47 in Montgomery District.

"On 27-6-21 Dharma Das, Debadas, Bisen Das, Chiran Das, Santaram Das. 7 or 8 people in all were produced before the Magistrate, and made to identify the "standing photo of Sunder Das." There is no doubt that the Jaidebpur Sadhu is a Punjabi."

The report adds : "what we came to know about Dharma Das at Sansara is this. He has numerous chelas who wander about to earn money, and send it, and Dharma Das himself wanders about too. He is about 55, complexion black, jata on the head, and a beard. Dharam Das told me that 3 or 4 years ago Sunder Das proceeded from Kumbha at Allahabad towards Calcutta. Sunder Das is about 30, with a Kata moustache and a Kata beard. Sunder Das used to live with him."

There is a postscript saying that "the original name

of Sunder Das, and the name of his parents have not been ascertained, only the name of the uncle has been ascertained. If the photo of the Sadhu in *lengti* which was given by Phani Mohon Bose be that of Jaidebpur Sadhu, he is certainly Sunder Das."

This is the report. The result of the inquiry was telegraphed to the Manager by the 2nd Rani on 4-7-21 and message said :

'Just received wire saying anticipated (antecedents) traced.'

On 2-7-21 the Manager had forwarded to Mr. Lindsay an English translation of Surendra Chakravorty's report saying that "they have got some clue to trace out the real identity of the man in near future". The letter adds. "that the Board has got conclusive proof about cremation, and as the real identity of the Sadhu is about to be ascertained the proposal, if any, of changing any portion of the notice should be reconsidered" (Ex. 388).

The notice referred to the notice of 3-6-21 declaring that the plff. was an impostor, looking to the Ex. 218, dated 5-7-21. The reason of the later telegram saying that the antecedents had been traced is that Sub-Inspector Momtajuddin, so he says, went to Aujla before the 1-7-21, verified the information received at Sansara from Dharma Das on 27-6-21 that the plff. was Mal Singh of Sansara. After this telegram it is idle to pretend that Satya Babu had nothing to do with the enquiry. To him the result came first, which is not unnatural.

On the 27-6-21 one Dharma Das Naga whom I may refer to as Dharma Das No. 2—the guru of the plff. may

be referred to as Dharma Das No. 1, made the following statement before Lt. Raghubar Singh, an Honorary Magistrate at Rajasansi, a place 7 or 8 miles from Amritsar :—

Dharma Das, chela of Harnam Das, by occupation Udashi, age 45 address, Sansara, profession Shephadar. I reside at Mouza Sansara, Thana Aujla, district Amritsar. This picture which has been shown to me is that of my chela, Sunder Das. His name was formerly Mal Singh. He used to live in Mouza Aujla in the district of Lahore. His cousin (father's younger brother's son) Narain Singh, who now lives at Chak, 47 in the District of Montgomery came to me with Mal Singh at Nankhana Sahib. That was 11 years ago, and I made him my chela at that time. At that time Mal Singh was 20. Mal Singh's parbaresh (those who had brought him up) were his uncles Mangal Singh, and Labh Singh of Aujla. Six years ago, Sunder Das left me. The eyes of Sunder Das were *billi*, and his complexion fair. I saw him four years ago at the Kumbha Mela at Prayag (Allahabad). I have not seen him again. The tasbir, Ex. P1, is the tasbir (photo) of my chela Sunder Das.

Read and admitted correct.

27-6-21.

Lt. Raghubar Singh has proved this statement, and I have no doubt that it was made by a Dharmadas on 27-6-21 after seeing a photo marked P1 by Lt. Raghubar Singh. At the same time, and place, three other persons made statements after seeing the photo aforesaid viz., Deba Das, Kala Singh, Bhagat Singh, Kartar Singh of Sansara. Sub-Inspector Momtajuddin made an application to him bearing these names and on that application he recorded the statements of these six persons, and cited

sec. 164, Cr. P. Code. He made over the statements, however, to the police officer.

None of these statements could however be evidence without calling the makers.

The statement of Dharam Das gave full details about Mal Singh. He belonged to Aujla, his cousin was Narain Singh, and Labh Singh. It gives the address of each. Mal Singh was initiated in 1910, was with this Dharma Das till 1915, and was seen in 1917 at Kumbha at Allahabad. He would be 46 to-day, if he was 20 in 1910. And he looked the man in the photo marked Pl. by Lt. Raghubar Singh.

Now in 1921, in the month of August, Dharam Das Naga the plff.'s Guru came to Dacca, as I said on 26th, and left on the 30th. Mr. Lindsay wrote to him asking him to see him, but he left. The evidence of the plff. is that he left, for fear of the police. In his memorial the plff. admitted that he had made a statement before the police in the Punjab as the result of the intrigues of his opponents.

During the trial the plff. proposed to prove statements made by Dharam Das at Dacca, but this was disallowed as it was obvious that unless he was called, it would not be evidence and probably not even then. There was no proposal by either party that he was going to be called, and all that had been tendered before was the evidence, taken on commission, of ten witnesses of Lahore who gave evidence to show that the plff. was Mal Singh, identifying him by photos before a commissioner at Lahore.

On 21-9-35 five days before the vacation, was produced a person before me who said he was Dharma Das Naga, that it was he who had made the statement before Lt. Raghubar Singh. He said that the plff. who was at

Court was his chela Sunder Das, that he, the witness, never went to Darjeeling, that he, the plff. is Mal Singh and belonged to Aujla of Lahore District.

The plff's case is that this man is an impostor who came to personate his guru, I have no doubt that he is so. In fact, it is manifest when one looks to his evidence but before I turned to that I should deal with the evidence of the ten witnesses examined at Lahore to prove that the plaintiff is Mal Singh as that evidence had its effect upon the Dharma Das Naga who came to Court.

These witnesses are :—

Mahar Singh 45 of Aujla, Lobh Singh 48 of Aujla, Ujagar Singh, 44 of Aujla, Mahua Singh 65 of Dalu Multani, Wasan Singh 65 of Aujla, Hukum Singh 50 of Aujla, Karum Das 50 of Aujla, Wazir Singh 52 of Aujla, Makhan Singh 46 of Aujla, Hukum Singh 50 of Aujla.

These witnesses were examined in October, 1933. It appears from their evidence that two years before their deposition one Arjun Singh Bideshi saw them, and showed them a photo which they identified as that of Mal Singh. The witnesses admit this, except Hukum Singh and Karan Das, and the exceptions too met this Arjun Singh at a Gurdwara at Lahore on the 5th October, 1933 when they came to depose. They were shown the two photos of the plff. the one marked D₁ is the a(24)—the plff. seated in lungi and D₂—the gorki or distorted photo of the plff. The witnesses identified these as that of Mal Singh, and identified also certain other photos of the plff. which were mixed up, including P₄, P₁, P₂. One witness identified a photo of the 2nd Kumar as that of Mal Singh the one marked P₆ though he was dubious about it.

It turns out, upon their evidence, that Mal Singh has no relation at all, except one Sunder Singh who is a son of his father's sister, Akki. Sunder Singh lives at

Khandiwala from which comes the witness Wazir Singh. If Wazir could come, it is difficult to see why Sunder Singh could not.

The account given of this Mal Singh is this :—

He is the son of Atar Singh, a Rathor Sikh of the poorest description. His mother was Swani. His mother died when he was 4 or 5, and his father when he was 7 or 8. He went to live with his father's sister, Akki, in a hut close by, and upon her death, lived with Tabbi whose husband was Jaymal Singh. When these died he lived with Sunder Singh, a son of Akki, who is now living at Khandiwalla, as I said. He was a cowherd in his boyhood and left the village when about 16, turned a Sadhu, visited the village some four times, and on one occasion with his guru, Dharam Das. He is also said to have shown, on one occasion, the tattooed writing on his arm, and he said it read Sunder Das and Dharam Das. He would be seen at Nankhana Saheb, and was last seen there 1 or 2 years before the Nankhana Tragedy—the murders that took place there. This Tragedy took place there in January 1921, as Lt. Raghubar says.

Nankhana is 40 miles from Lahore. And the Aujla witnesses say that they would go to Nankhana to see the fair and find Mal Singh there. The case was that the plff. came straight from Nankhana to Dacca in 1920, so that he was talking Atul Babu's—"unintelligible Hindi."

What becomes of the relations—the cousin and the two uncles mentioned in the statement before Lt. Raghubar Singh. They vanish. They never existed. What become of the witnesses whom Inspector Momtajuddin met in July 1921 at Aujla and who verified the statement made on the 27th June by Dharam Das as to Mal Singh's home and antecedents, and whose report was telegraphed to the Manager by the 2nd Rani? Nobody called them.

As identification by a photo is not satisfactory, the defendants took a detail—that Mal Singh had a tattooed mark on his arm. Dharam Das who came to depose in Court had apparently not been primed on this point—for he had never seen it, though he said again he had seen it at Allahabad when he saw him last. In cross-examination the Lahore witnesses gave other details; complexion fair, hair black like his father's—small moustache brown; fat; long beard, eyes not black but cat like; nose fat; nostrils broad etc. Black hair like his father's seemed to make an end of the case, and the fact that he had not the relations mentioned in the statement before Lt. Raghubar Singh would seem to clinch the matter, and the word fat did not apply to the plaintiff in 1921 at all. It is therefore not surprising that Mr. Chowdhury did not put to the plaintiff that he was Mal Singh of Aujla.

But the case was going to be revived and was sought to be saved by the suggestion put to the witnesses I mentioned above that black hair might become brown, if you do not use oil and neglect it, until it came to be admitted that the plaintiff's hair is brownish, or reddish as I said, and the witnesses came to admit that the plaintiff's hair resembled that of the 2nd Kumar.

It seems to me extraordinary that it should be possible for a party to prove that the plaintiff is Mal Singh and to put him at all sorts of places and put into his mouth all sorts of things without asking him a word about it, but I have still considered the evidence in view of the gravity of the issue. It turns out that this Mal Singh is a person without a relation at all, and without a trace of his former home, for I am not prepared to believe that he has a cousin at Khendu walla, or he would be called. And there is no doubt whatever that the Lahore witnesses are a set of peasants who have been got hold of to depose to a photo of

which they know nothing, and into whose mouth have been put a few details to fix the identity with the plaintiff.

The Dharma Das Naga, D. W. 327 who came to Court to revive a case that was really dead, had to give an account what will fit the Aujla witnesses, the statement before Raghubar Singh, and the proceedings of the admittedly real Dharmadas Naga who came to Dacca in 1921.

There is an interesting account as to how this man was secured. Inspector Momtajuddin got orders to proceed to the Punjab, to find this Sadhu, and got also a letter from the commissioner of Dacca Division so that he might get such help as might be necessary from the local Police to trace a wandering Sadhu. Inspector Momtajuddin started from Amritsar on 29-7-35. On 1-8-35 he proceeded to see his brother somewhere, and upon his return heard from Arjun Singh Pardeshi, the same man who had procured the Aujla witnesses where the Sadhu was. Having thus ascertained where the Sadhu was Arjun Singh had kept him ready—he proceeded to Darjeeling to present the letter I mentioned, and put the D. I. G. to the trouble of giving him an order asking the local police to help him to find a wandering Sadhu. And the Inspector came back without seeing the Sadhu at all though he alone could say if he was the right man the man before Lt. Raghubar Singh. The whole journey of Inspector Momtajuddin was a pretence to satisfy the officials that the officer who had found the Sadhu in 1921 was being sent out.

The Sadhu came with Arjun Singh, as he admits, put up at a house near the house of Satya Babu, as Satya Babu admits for three days, and then came to Dacca and put into the box 5 days before the vacation. Before he was put into the box I was told that the witness talked only Punjabi, could not understand Hindi, or Urdu, so that an interpreter was necessary. Major Patney very kindly

agreed to act as such, but it turned out that the whole thing was a pretence, that the man could not only speak and understand Urdu, but could understand short Bengali sentences, and the mixture of Hindi and Urdu in which the questions were put to him during cross-examination though he was trying to begin with to pretend that he understood Punjabi alone. If it were not a pretence, he would not be the Dharmadas who had made the statement before Raghubar Singh on the short ground that Dharmadas had made his statement in easy Urdu which a Bengali, living in large towns, would understand; and directly it appeared that Surendra, a Dacca man had sent in his report a lot of information, as derived from the Dharmadas he met in 1921 at Sansra, the case became this Dharmadas, D. W. 327, talked at Sansra, half Hindi half Bengali to quote Surendra's own words, so that he could understand him.

It was apparently expected that the barrier of Punjabi, and the interpretation, and the 5 days before the vacation, cut short by a period of illness and a Sunday, and his examination at his house on the ground of illness would save him. It did not.

He began by saying that he made the statement before Lt. Raghubar Singh, and identified before him the photo A(24) a copy of it as the photo of his Chela Sunderdas. The photto did not bear the mark Ex. p1 which Lt. Raghubar Singh had put, and the statement without the photo shewn, is useless. Upon my inquiry Mr. Chowdhuri said that the particular photo shewn to the witness by Lt. Raghubar is not in his possession, but his instructions received from Inspector Momtajuddin and Surendra Chakravarty, were that A(24) is a copy of the photo which was shewn to the witness on 27-6-21 before Raghubar Singh (*vide* order No. 1243, dated 25-9-35). Consistently with that case the witness Dharmadas said that he was shewn the photo

A (24) before Lt. Raghubar Singh. In this photo the plaintiff is seated in a lungi. Somebody on the defendants' side had however marked the passage in Surendra Babu's report, dated 27-6-21, that the photo shewn to the witnesses before Lt. Raghubar Singh was the Khara photo (standing photo). It was noticed later, and too late, but the witness was still in the box, and he said that the photo shewn to him before Lt. Raghubar Singh was not the seated photo at all, but the standing photo. Asked why he had sworn to the A(24) the seated photo before he says he did not say it, and added that he was shewn this seated photo when his statement was taken by a pleader with a view to his examination, and that he had denied that that photo had been shewn before Raghubar Singh. That is to say, despite this, he was shewn the photo A (24) in examination-in-chief, and he admitted that was the photo shewn. And the instructions of Mr. Chowdhuri were that the A(24) is the copy of the photo shewn on 27-6-21.

It is perfectly clear what has happened. The statement before Lt. Raghubar Singh bears no signature or finger impression of the maker. It has no meaning apart from the photo shewn, and that bore Lt. Raghubar Singh's Ex. P(1) and his signature, and in all probability a finger impression of the maker. It is incredible that a statement of this kind was taken, and supposed to have been taken under sec. 164 Cr. P. Code, and no signature or finger impression taken. Sub-Inspector Momtajuiddi would insist upon it, and commonsense would suggest it. The photo bearing the Ex. P(1) must be the photo of somebody, not the plaintiff at all, or it bears the signature or finger print of somebody not the D. W. 327 Dharmadas Naga at all, and this man could not pass as the maker of the statement, or the statement could not affect the plaintiff, unless the photo Ex. P(1), is withheld, and false evidence made another photo as a

part of the statement Ex. A (24), was thought of as a suitable thing for the purpose, but Surendra's report hit, it, and then comes the tale that the standing photo was shewn.

I do not believe that the photo marked P(1) is missing. That was not said even on the 25-9-35; it was not in learned Counsel's possession. It came to be said later, not by any witness, but by learned Counsel, that it was missing, though Inspector Momtajuddin said that the statement and the photo were made over by him to Mr. Lindsay, and it is known that every paper connected with the Sadhu has been kept in special files. The statement remains, but the photo is gone. I consider this not merely a trick of the worst kind—this substituting another photo for the one shewn but fraud.

The statement goes off as it must, without the photo shewn to the Dharmadas who made it, and the non-production of it, and the fraudulent attempt to substitute for it another photo, and this being hit, a third, is in my opinion, ground for thinking that the statement that the man in the photo was Sundardas was obtained by shewing some photo which is not that of the plaintiff at all, and this after all is the origin of the name that was fastened upon the plaintiff in the proceedings that followed.

The statement goes, but the man remains. If he did not make the statement before Lt. Raghubar Singh, he is not the Dharmadas Naga, the *guru* of the plaintiff on the defendants' case. Upon the following considerations only one conclusion is possible:

1. It is agreed that A(24) was not shewn on 27-6-21 to the maker of the statement, but the man swore as a part of fraudulent scheme, that it was. He swore later to the standing photo which was not shewn at all, or it will bear the exhibit mark.

2. If he were the same man, the photo bearing the exhibit mark will be produced.

3. He is not going to make the mistake that Aujla witnesses had made. He says that Mal Singh was not fat, and his hair Sonari (golden) like mine, just as another witness, called during the trial, from the Punjab said that his hair was *Kakka bhura* and a yet another said, *Kakka Kakka* or dull gold as he explains.

4. The maker of the statement gave his profession as shebadar or the holder of a religious office at a Gurdwara. The witness says that he was shebadar of now where, and never said he was so. Five witnesses, including Deba Das, a Chela of Dharmadas, made statements before Lt. Raghubar Singh on 27-6-21, but the witness does not know this fact. He gives the narrative in the statement of course, but dares not mention the relations, except Narain Singh, whom of course Aujla witnesses disproved. He says that on a day, years ago, a Bengali Babu and a police man came to him, and shewed him a photo, and asked him who he was. They came at 3 p. m. while he was staying at Gurukabag, a temple at Gokhewali, a village close to Chhoto Sansara. They shewed him the photo the photo shewn to him at Court (Ex. A (24)) to begin with altered to the standing photo later). He said on seeing the photo; a mere Chela Sunderdas ki hai (it is the photo of my Chela Sundardas). The two visitors took it down, and did not say another word (o lekke chup). They passed the night at the Gurukabag, and took him the next morning to the Magistrate, and there he made the statement. Before the vacation that was the whole account there was not a word before this statement, except shewing the photo, and "Uo lek ke chup." The Dharmadas whom Surendra had met recognised the photo along with his Chela, Debadas, and had a lot of talk with him, so that he got the information he was conveying,

not all, but some of it from Dharmadas himself. After the vacation he D. W. 327 began to have a little talk, and came at night to Debadas so that it might be said that Debadas saw the photo there, and with him. He says that he has 4 or 5 Chelas in all, and had 12 Chelas in all, and they could hardly make any living, much less send any money. It is wearisome to point out all the marks of falsehood in his evidence. That he was a party to the attempt to substitute another photo for the Ex. P (1), and that being displaced, a third is itself conclusive Ex. P(1) would destroy him. He is not the man who made the statement before Lt. Raghubar Singh, and therefore not the Guru of the plaintiff

After his examination was over, a desperate attempt was made to prop him up. A Sikh pleader went all the way to the Punjab shewed him to Lt. Raghubar Singh, and Lt. Raghubar Singh came, on being approached with a letter from Sir Sunder Singh, an acquaintance of Satya Babu and identified the photo, kept of him, as that of the Dharmadas who had made the statement before him. He admitted he did not know him before. He admitted he had not seen him for a day until the Sikh pleader took him to his house after his deposition, and it is perfectly clear from his evidence that he has no independent recollection at all of the six people whose statements he recorded, and none at all, of the three others mentioned in Surendra's report, Bissan Das and the rest.

This Dharmadas, asked about what he did at Dacca in 1921, says that he met Sundardas (plff.) at the house he put up in, but had not a word with him. He went to the house of Nandra supposed to be his way of pronouncing Ananda Roy, was shewn a photo, could understand nothing of what was being asked, so that on the next day he went again, and this time there was a Sikh interpreter, and he

was asked whose photo it was, and he said it was Sunderdas's and not Kumar's. That was all. It was apparently supposed that he would steer clear of Dacca by saying that he spoke to nobody—he understood nobody and nobody understood him and that obviously suggested the prayer for an interpreter, but it appeared that everybody could understand him, and Surendra Babu could understand his half Hindi and half Bengali at Sansra in June 1921, so he says. If anything more were necessary, there was the swelling on his abdomen, a huge thing, and he was hiding it under a long shirt. He says he had it when he came to Dacca, suggests that nobody had seen it, for he would bathe at 4 a. m. and not knowing that long before his arrival. witnesses had described the Guru as a man who was always counting beads, blundered into saying that he never counted any.

The Sikh pleader again rushed to Sansra, and got hold of 4 witnesses, Gujjar Singh, Chandra Singh, Bur Singh and Bhagat Singh from Sansara to fit him into Sansra on the 27-6-21. And much later, came Inspector Momtajuddin and Surendra Chakarvarty. The account which they give is this: Inspector and Surendra went to Sansra on the 26th June, met Dharmadas at Gurukhabad with Gujjar Singh, then a medical student, an interpreter, and his father, and then that night Dharamdas went to the Gurdwara at Sansra, where Debadas is Shebadar, and the next morning he alone went to the Magistrate to make his statement, and then the other witnesses, so that he did not see the rest, not even his Chela, and Surendra Babu, after seeing him began his statement, and seeing also that he was shewn the standing photo left in the heat of June in the Punjab, and sent a batch of witnesses from Amritasar, 8 miles off, and sent his report in anticipation of their statements which did not take place. I do not believe a word of this account

which has been ingeniously composed to shut out from D. W. 327 Dharmadas the knowledge of the things of which he had betrayed ignorance, to get him in touch with Debadas, once at all events, so that the two could see the photo at the same time, but it was not possible to make him taciturn as well, in view of the report. Now this Debadas, admittedly the Shebadar of Chhoto Sansra from which the witnesses have come, including one Bhagat Singh who pretends to be the Bhagat Singh who had made the statement before Lt. Raghubar after seeing an unknown photo, and who pretends to have known Sunderdas, too, as Dharmdas Naga would come to Chhoto Sansara to see his Chela, Debadas, who has been permanently residing in the village for 20 years. The Sikh pleader goes to bring this lot, but not Debadas, the Sebadar of the Gurdwara there. Apparently he would say what photo was shewn before Raghubar Singh, and nothing would induce a man of that kind to admit this person in court as his Guru.

Along with this lot came two persons, also brought by the Sikh pleader, and one of these deposed that he was Harnamdas, the Guru of Dharmadas, and he identified the photo of D. W. 327, Dharamdas as that of his Chela Dharamdas, and identified the plaintiff as Chela's Chela, Sunder Das. The whole account of Dharmdas and Harnamdas has been taken from the plaintiff's witness Darsandas, but one detail was missed. Darsandas had said that his Guru was a Gour Brahman of Dilu, in Ludhiana District. The man adopts Darsandas, alias Gopaldas, as his Chela, adopts Dilu, but does not know that he is a Gour Brahmin. He says that Dharamdas made Sundardas his Chela 10 or 12 years ago, and he himself had initiated Dharamdas 20 years ago. He told a deliberate falsehood when he said that he did not come with the rest of lot, but

stayed at Calcutta, for some three days, before he came to Dacca. Gujjar Singh and Chandan Singh were hiding him, but Bhagat admitted that the whole lot including this person came together to Dacca, without halting anywhere. It is perfectly clear that the false Dharmadas Naga was procured by Arjun Singh, the Khalsa Dewan man, who had procured the Aujla witnesses before, in order that he might come, and personate the man who had made the statement before Lt. Raghubar Singh, in 1921. He came, and then began the attempt to get this statement to hit the plaintiff, by changing the photo. And Inspector Montajuddin who had gone to the Punjab to make a pretence of a search for him, and who admittedly had never seen him before he came to depose, had to come, and swear to his identity with the Sadhu he had met in 1921, and to speak to the "standing photo" as the photo shewn to him, after instructing learned Counsel that it was the seated photo A(24). It was not a mistake, but part of a nefarious scheme to substitute a photo of the plaintiff for the one marked Ex. P(1) by Lt. Raghubar Singh.

I find that the man Dharmdas Naga, D. W. 327 might be anything, might belong to Narowal, and might even be called Dharmdas, admittedly a common name in the Punjab but he is not the man who had made the statement in 1921 before Lt. Raghubar Singh. It follows on the defendant's case that he is not the man who is the Guru of the plaintiff and who came to Dacca in 1921, even if there were not the evidence, which I accept, that the Dharmdas who came to Dacca in 1921 was different, and had not the protuberance on his abdomen. The admission that the 'Guru had made a statement before the police in the Punjab is not admission of a statement before Raghubar Singh. Assuming that the true Guru had made this statement, it is not evidence without calling him and even if it were, it

has no meaning without the photo that was shewn. I find that it has not been proved that it was a photo of the plaintiff. It turns out therefore that the much vaunted discovery of the name Sunderdas that Court of Wards came to fasten upon the plaintiff was the result of a report accepted without examination, and of a statement evoked by somebody else's photo which has been naturally withheld. One seldom comes across anything more nefarious, but the scheme must have been the idea of somebody who wanted a quick report to convince the Court of Wards, and it is known that it was telegraphed to the 2nd Rani at a moment when she or Satya Babu was fearing that the impostor declaration might be changed.

I find that it has not been proved that the plaintiff is Mal Singh of Aujla, and D. W. 327 Dharmadas Naga is not his Guru.

The estate, with all its resources and even with Govt. aid, has failed to find out in 12 years who the plaintiff is, though he has been living at Calcutta and Dacca, and was not hiding for a day.

But whoever, he may be, is he a Hindusthani? I should decide it in the negative on the short ground that the evidence I have discussed, the direct evidence and the bodily marks and all the facts I found, including the handwriting prove to demonstration that he is the Kumar. But I should discuss the evidence on the point, as this, like the death at Darjeeling; and the learning of the 2nd Kumar, has been a main topic in the controversy.

The case of the defendants is that the plaintiff talked Hindi, and a peculiar and unintelligible Hindi, that is to say, Punjabi in 1921, and the suggestion to Mr. Ghosal examined on commission was that in 1924 when Mr. Ghosal says he met the plaintiff, the plaintiff could not speak

Bengali. The case was that he came to pick it up later, and the result one saw in examination-in-chief.

The case of the plaintiff is that he spoke Hindi, and Hindi alone, for nearly 12 years so long as he was with Sanyasis, that he spoke only that until his *atmoparichay*, i.e., until 4-5-21, and that after that, he has been talking Bengali. The 2nd Kumar used to speak unmitigated Bhowali dialect but he could talk Hindi as well. His Bhowali speech was such that a Calcutta witness who saw him in 1906 and 1908 says that he could hardly understand it (P. W. 212). Few west Bengal people would understand Bhowali dialect as spoken by illiterate people whose speech has not been refined by books.

At Court the plaintiff deposed in Bengali, and the few Hindi words he used and the words which I thought Hindi were noted. It turned out that some of the words which I thought Hindi were local words. For instance, the word *titar* (তিতর) partridge). In west Bengal, the word is *titir*. It turns out, as I said before, that the word is pronounced *titar* in Bhowal. Similarly, the word *ginte*. The west Bengal word is *Gunte* (to count) but an advocate for the defendants was caught using the word *ginite*, while addressing a question to a witness, and he admitted that illiterate people in Bhowal used that form (P. W. 520). Even *Kalkatta*, which is a Hindi way of pronouncing Calcutta, I found in a Bengali pamphlet written by a Bhowal man (Ext. T.). Phani Babu's house at Jaidebpur is called *Nayabari*. If that were not known, and the plaintiff has called the house *Nayabari*, he would instantly be set down as a Hindusthani. It is dangerous to decide upon words.

Nor is it necessary to do so, for there is no doubt whatever that the plaintiff did break into Hindi, and that he had every motive to avoid it. He broke into English

too—used more than 50 English words, like biscuits, body-guard, family Guru, Jockey, &c. I doubt whether there is any Indian who does not know some words of English, such as tax, train, railway, guard, double. And those who know English, most of them can hardly talk Bengali for five minutes on end without using English words, unless they do it for a bet.

If, therefore, the plaintiff was living among Sanyasis, as I find, he did, for 12 years, speaking nothing but Hindi, and living the sort of life they lived, going about naked, sleeping on bare ground, with a log for a pillow, tramping from place to place, and that in the first period of his youth, he would, I expect, talk Hindi like his mother tongue, and acquire their accent and intonation. If, therefore, he resumed Bengali, I do not expect he would not break into Hindi, or would make a resolution not to speak Hindi at all.

Nobody has said and it would be nonsense to say, that directly he declared his identity he dropped his Hindi, as one drops a cloak.

It has to be seen therefore, whether this Hindi tone and this breaking into Hindi, and speaking Bhowali Bengali with a Hindi accent, which is not speaking it like a Bengali, shews a Hindusthani who has picked up Bengali, or a Bengalee who has acquired a Hindi manner of speaking.

Two things may be disposed at once in considering the point. One of them is the theory that no Bengalee can acquire Hindi accent, however, long he might live among Hindi-speaking people. That is refused by experience. Mr. O. C. Ganguli, a very respectable gentleman of Calcutta, solicitor by profession and an artist or Art-critic of repute holds this view. It might be true of Bengalee who live with their families in the up-country, but when it is said that Bengali accent is immune from Hindi, or foreign taint,

I do not agree. I need not rely on my own experience, not refer to Indians who speak English with an English accent or an appearance of it, for I had before me a witness, a Bengalee who deposed before, and his tone was Hindusthani, so that if he had been speaking in a different room, no one would think him a Bengalee. He is Swami Nityananda Saraswati, P. W. 990. He is 53, and had lived, or moved with Sanyasis, from his 22nd year until a year and a half ago. Another witness, Amalendu, who belongs to a very respectable family of Dacca says that his father Swami Bishnuchit renounced the world some 12 years ago, and when once he paid a visit home, he had acquired a Hindi tone.

Another point is the slight impediment in the plaintiff's speech. Witnesses have described it as *baja baja, bhar bhar, Chibana Chibana, atka atka, theka theka, chapa chapa, areh areh*, as though the words are sticking, or being 'chewed out' 'tongue-tied,' 'blurred,' 'sluggish,' 'indistinct,' 'heavy' and so forth. It is impossible to describe the thing, but it is something like what occurs if you have something in your mouth, while speaking. Mr. Chowdhuri suggests that it is the hesitation in speaking a tongue not his own, and apparently because of that, no witness on the defendants' side refers to this trait, as they had heard as they were bound to say, with what truth will be seen, him speak only Hindi. It is nothing of the kind. It is a trait of his speech. Mr. Stephen to whom the plaintiff spoke in Hindi noticed this. Mr. Ram Ratan Chhibi, an Engineer in good post carrying a salary of Rs. 500|- per month, is a Punjabi. In 1925 he was living at 7, Bose Park, while the plaintiff was at 6, Bose Park. He had frequent talks with the plaintiff, and in Hindi. He noticed this indistinctness. He says that the plaintiff's Hindi was the Hindi of a Bengalee. He would mix up Bengali words, and it is impossible, says

he, that a Punjabi could affect that without his finding it out. I believe this witness.

I do not agree that the plaintiff must explain this trait in his speech or the identity, otherwise reached, goes off.

Unless it is congenital it does not affect the identity at all, if it is otherwise clear. It might be due to the cyst under his tongue, or might not be due to that, and the plaintiff or anybody else might have talked of poison or any other cause, and the fact may be that nobody knows the cause, but it has appeared. If it were impossible for such a thing to appear, it will go to identity, but I do not see how it could not possibly appear, looking to the cyst, the syphilis, the furrow on the tongue, and may be some other cause of which every body is ignorant. It is useless to speculate, as the plaintiff or his people seem to have done, but talking of impossibility, no expert on either side has said that it could not be acquired, or that it could not occur without adequate defect in peripheral organs, such as a cleft palate, malformed arch and the like. Talking still of impossibility, one finds a chapter on speech disorders in Dr. Taylor's—Readings in abnormal Psychology on page 391 to 394. It appears, among things, that soldiers who had nervous breakdowns at the front, developed, most of them, a speech defect, a certain, stuttering which came to be known as war stuttering. Some times the speech condition cleared up in a few days, but in about 5 per cent. of cases, the condition became fixed, and there are still many ex-service men who have disorders of speech (page. 392).

I find this particular speech disorder has not been proved to be congenital, the defendants' case is it is not so that it is acquired, that it is not due to hesitation in speaking a different tongue.

Turning now to the speech of the plaintiff, there is a body of evidence that he began to talk Bengali after he declared his identity. Apart from the sister, and the relations, there are numerous witnesses who speak to the year 1921. These include P. W. 62 Rebati Babu, pleader, whom I mentioned before and the following.

P. W. 263 Jogesh Roy, B.A., the Head Master whom I mentioned before (June 1921).

P. W. 355 Purna Chandra Bhattacharya, Sub-editor of a newspaper who is not a witness to identity at all (June 1921).

P. W. 387 Arun Nag (May, 1921).

P. W. 155 Manindra Bose, Lecturer, Calcutta University (About October, 1921).

P. W. Babu Gobinda Roy, Advocate, High Court (on commission) who was long the vakil of the estate in the High Court.

I have selected only a few names, but there are many others, people of Bhowal, people the 2nd Kumar had mixed with at Dacca, and they spoke to him, and he spoke to them, and they all say that the plaintiff spoke Bengali, but in Hindi tone, and some of them admit that he used Hindi words too, and sometimes spoke Hindi too, to people who spoke to him, in Hindi. Innumerable people must have seen him at Jaidebpur, and Dacca, and must have spoken to him, but out of these, though the plaintiff has called a great many, the defendants have called a couple or so of impecunious pleaders of Mymensingh and a couple of young Mukhtears from Narayanganj, and a person who was Head Master of Char Sindur School, but dismissed for stealing fees, as his own evidence shews, and certain others equally questionable people. There are however, exceptions, and the evidence of these will require consideration.

As to 1921, the case that the plaintiff was speaking Punjabi, and could not understand a word of Bengali was consistent with the case sought to be proved by the Aujla witnesses that he was coming straight from Nankhana, but it is not arguable. On the river side people would speak to him in Bengali. Mr. Debabrata Babu's evidence concludes the matter.

At Jaidebpur, in May, 1921, after he had declared his identity, he commenced talking Bengali, Bengali in Hindi tone, and mixed with Hindi words. Of that there could be no doubt whatever. Mr. Needham's report. Ex. 59, does not say that the man could not understand Bengali. But Mohini Chakarvarty's report written on the 6th May when the Court of Wards had turned against the plaintiff, does not mention inability to speak or understand Bengali, as a ground for supposing that the man was an impostor. It gives another ground. The witnesses examined by the defendants, and coming from the Punjab, have done this service to the Court that it could see how a Punjabi, coming fresh from the Punjab, behaves, and I consider that for any of them to pretend that he is Bengalee would be ludicrous. He would not understand a word of Bengali and his whole manner would betray him, and nobody, unless he is mad, would dream of getting him to personate a Bengalee and putting him before the Collector, and demand an inquiry. Rai Saheb's—Sample Evidence—now contains a sentence that the plaintiff could not speak Bengali, and in the interviews he now speaks of have been put test questions, and Hindi speech which were not mentioned before. I have already dealt with this plan. "Don't ask the plaintiff, but prove that he could not answer questions before."

On 19-5-21 the following entry was made in the thana Register at Jaidebpur.

4 P. M. last night there was strong gale and that has

blown away the fences of the basha. No information of breach of the peace, or infectious disease in the *Eleka*. People are coming in large numbers, seeing the Sanyasi, and declaring that he is the Kumar, and the Sanyasi is speaking to people in Bengali. Rice selling at 6 seers per Rupee.

Sub-inspector Abdul Hakim (P. W. 1028) who made this entry in the Register in the course of his duties was called as a witness for the plaintiff. He is still in service, and would not say a word more than he could help for the plaintiff. He was present admittedly on the 5th May, 1921 when Rai Saheb and Mohini Babu and the Sub-Registrar Gouranga Babu and certain other people were interviewing the plaintiff and testing him the day on which was put the bird-shooting question, and of which an account omitting this detail occurs in the report, dated the 6-5-21, of Mohini Babu which I have discussed. This Abdul Hakim tried his best to get out of his statement in the defamation case but even he says.

“The plaintiff in the suit I have seen. I have heard his speech. He talks Bengali with a Hindi *tan*. I heard him so talk in May, 1921 when I was an officer in Jaidebpur Thana. I noted one other peculiarity in his speech. It was indistinct.”

In cross-examination he was asked whether it was wonderful for a Bengalee to talk Bengali. He said no. Asked what was the occasion to record that in the diary he said; probably because he was not speaking Bengali before. He tried to convey that on the 5th, the plaintiff was not speaking Bengali—he only gave a name, he says, and adds that he has no personal knowledge whether the plaintiff could talk in Bengali before the 19th May, but the witness did speak to him, can't recall if it was before or after the

19th May, and his evidence is that the plaintiff was speaking Bengali in Hindi tone.

There is little doubt that the plaintiff spoke Hindi too, or using Hindi words, so even witnesses for the plaintiff have said he was talking Hindi, Bengali in Hindi tone would appear to most villagers as Hindi, as a Bengali sentence uttered in Hindi tone did to a witness for the defendants (D. W. 85) and few would stop to notice, or recollect that it was apart from the tone, unless he had occasion to talk himself. The essence of the matter is that the plaintiff could speak Bengali at all in May, 1921, as undoubtedly he did, and not whether he religiously avoided Hindi.

I find that the plaintiff did start speaking Bengali in May 1921, and it is impossible for me to disbelieve the witnesses who say that he did so, and they spoke to him, and he to them, and talked of old times. These witnesses include people whom I would not disbelieve, and they are confirmed by the following facts:—

In 1922 the plaintiff was talking Bengali (P. W. 458 Bhupen Ghosh, P. W. 914 Bilas Babu, B. E. who held a high post at Amritasar and other witnesses). I do not believe that he could perform the *sradh* of the Rani Satyabhama in this year and in the middle of a crowd, without making himself ridiculous, if he could not talk Bengali.

In 1924 Mr. K. C. Chunder, I.C.S., Sub-Divisional officer at Manikgunge, went to see him at the house at Dacca where the plaintiff was living. Mr. Chunder says:—
“I had conversation with the Sanyasi. I had conversation with the Sanyasi in Bengali.”

The interview lasted about half an hour. Asked what sort of Bengali it was that the plaintiff talked, he said: “it is not possible for me to say anything about the exact words, whether of question or answers, but my definite impression is that the Sanyasi spoke mixed Hindusthani and

Bengali, and the Bengali appeared to be that of an up-country man. In answer to a further question he says that it appeared to him that the grammar and inflections were all wrong. The witness was not cross-examined. One sees now that the plaintiff was talking Bengali, and if it was Bhowali Bengali in Hindi tone, or an attempt to speak Calcutta Bengali in Hindi tone, in deference to the visitor who did not belong to East Bengal, it was enough to leave the impression that memory recalled after 11 years.

Mr. Chunder had not to speak Hindi on this occasion and this evidence is an answer to the case that the plaintiff could not speak Bengali when afterwards he met Mr. Ghosal in Calcutta. Mr. Ghosal swore that the plaintiff spoke to him in Calcutta in Bengali. This was in 1924, for the plaintiff went to Calcutta in about July 1924. He met him several times. He noticed the stuttering, but not the Hindi tone. The plaintiff met the Bara Rani (defendant no. 2) in this year. She was not asked what language the plaintiff spoke. In 1925 the plaintiff met Mr. J. N. Gupta, then Member of the Board of Revenue. Mr. J. N. Gupta had one or two minutes' talk with him noticed his *khota twang*, and decided that he was an up-country impostor. He could not speak Bengali at all, and what Bengali words he used was tinged with what may be called *khotas twang*. Asked in what other language the other words were, he could not say "we exchanged only a few words."

It is the Hindi tone. Nothing prejudices a man more against a Bengalee claimant speaking in Hindi tone. Of that the defendants have taken the fullest possible advantage but it went for nothing with people who knew him, nor could it displace the conclusion as to identity reached after a full investigation.

The evidence of Mr. Saradindu and Mr. O. C. Ganguli

cannot go further than that of Mr. J. N. Gupta, and is explicable by the same cause, and there is in the case of these two gentlemen the further reason that they are Calcutta Bengalees who would not understand Bhowali Bengali, so that the speech they heard was the attempt of a man to speak Calcutta Bengali in Hindi tone. The plaintiff would, I expect, find it easier to speak Hindi, and Mr. Ganguli says that he spoke it without any attempt to hide the fact. As to the witness who was called to prove an admission by the plaintiff in 1921 that he could not understand Bengali, all that I need say that he cannot displace the whole weight of evidence to the contrary. I consider it impossible that the plaintiff, on the theory that he was an impostor would say: *bagla buli nehi ata*, or would, in that event, sit out and meet whoever called. It seems to me that this evidence of a single witness, proof of an actual admission was thought necessary as soon as it began to appear that Bengali with Hindi intonation might save the identity, so that an actual admission must be put into his mouth, as things have continually been put into his mouth, after he had left the box. If the plaintiff did not know a word of Bengali the situation that arose in May 1921, would not have arisen. I prefer the testimony of Abdul Hakim (P. W. 1028) supported by thana entry and the evidence in the cause to the testimony of the witness (D. W. 282).

Two interviews are to my mind conclusive on the point, the interview of Mr. N. K. Nag, Barrister with the plaintiff, and the interview of Rajen Sett (D. W. on commission) with the plaintiff. These interviews were in Calcutta, the former in January 1925, and the latter somewhere near it. These interviews I have fully described above. One sees in either one Bengali talking to another—there is no mistaking it, and one does not get the slightest suggestion of Hindi or of any difference which it was bound to make.

I add also one other fact: The plaintiff deposed in public in the Court of Mr. Martin at Dacca in 1929 in the section 144 case, in which Mohini Babu and other officers of the estate deposed. Nobody suggests that he was deposing in Hindi. The evidence that his voice is the same as that of the 2nd Kumar nobody has denied, except Phani Babu whose denial goes for nothing, and except Manukh, a man of straw, who was probably not using voice in the same sense. If the voice shewed any difference that would be instantly seen, and will go into the report of the 6th May, 1921.

Speech apart, an endeavour was made to shew that the mind of the plaintiff is that of a non-Bengalee, and that endeavour was during the cross-examination of the plaintiff. I should go now into that portion of the cross-examination.

Cross-examination as to this point too is suspiciously brief, and took the form of throwing the plaintiff into a vortex of words, and puns. Educated people are apt to lose the capacity of seeing into an illiterate mind, and there is nothing so puzzling to an illiterate man as words wrung from context, words taken alone, or plays on words or puns., or quibbles. Few illiterate minds could pass instantly from one meaning to another. All that this part of the cross-examination has shewn is that the plaintiff has not this ability. For instance he is asked:

Q. What is the meaning of *Swetbarna*? (শ্বেতবর্ণ)

A. White.

Q. *Raktabarna*? (রক্তবর্ণ)

A. Red.

Q. *Byanjanbarna*? (বাঞ্জনবর্ণ)

A. The colour of brinjal.

The first two answers were all right, *barna* meaning colour but in *Byanjanbarna* it means a letter, and the

word *byanjanbarna* means a consonant. The plaintiff does not know that, and colour was in his mind. The explanation is obvious, it was being suggested that *byanjan* is Punjabi for brinjal until Mr. Ram Ratan Chhiba (P. W. 939), Punjabi, put an end to it.

As to the ignorance of the word *Byanjanbarna*, unless it was produced by the pun, there are people who know b. c. d. etc., without knowing the word consonant.

Most of the ignorance is produced by this play of words and the residue I would expect in an illiterate Bengalee. It would be waste of time to deal with these puns, and I do not believe that if the defendants really believed that the plaintiff was a Hindusthani, they could not think of any other way of exposing it. A Hindustani has a certain frame of the mind which long residence in Bengal could not destroy, or replace, and that does not require very great skill to expose, particularly when it was known that the plaintiff was illiterate, and dull.

One little attempt was made in this direction—the plaintiff was asked if he could give a line of a Bengali song, or if he knew a nursery rhyme. He said he could not, and as to nursery rhymes he said: “Women repeat these things.” I dealt with this point before—the point as to songs. Few Bengalees unless they are learned, and have acquired the detachment of an educated man, as a surgeon does as regards the body, would admit in a formal gathering that he knows a song, much less repeat it, and as to nursery rhymes, an illiterate man would think them “things which women repeat”—and no man should know. Mr. Choudhuri certainly removed his dread of being considered vulgar by repeating a *chhara*, and asking him if he knew that, but unfortunately the *chhara* was not an E. B. *Chhara* at all. He put to him:

*Chhele gumula para jurula bargi elo deshe
Bulbulite dhan kheyeche khajana dobo kishe.*

(The baby has gone to sleep, neighbours have got peace but the *bargi* has come, and *bulbule* have eaten up the paddy, how pay the rent?)

The very language shews it is not an East Bengal *Chhara* at all, nor the subject. East Bengal was never visited by the *Bargis* or *Maharattas*. Nursery rhymes are now being printed, and spreading over the country, and over stepping boundaries (vide D. W. 93, *Giris*, a pundit in a school of the estate). The witness admits that *chharas* are now in printed books, but says that he has known this *chhara* all his life. Asked to repeat it he repeats it differently from the form given in his examination-in-chief and put to the plaintiff, and he is caught by the use of the word "*diba*" instead of *dimu*. He has picked it up from printed books, and does not know it very well even now. The witness adds that he knows the other *chhara* put to the plaintiff, viz., *ghum parani mashipishi*, but he knows no other. I need not discuss this *chhara* to which the same remarks apply, and I notice that the words of this *chhara*, as given by the witness, are different from those in vogue in West Bengal, and from those given by *Phani Babu*, so that it seems that this witness had to learn it by heart to oblige the defendants, and then blundered. I may add that even a Calcutta witness, asked in cross-examination, whether he remembered the *chhele ghumana chhara* said he did not remember it, so that it seems that such a thing is not beyond the range of possibility, and it may depend upon what sort of mother or nurse you had, or what sort of either your children had.

I consider that the cross-examination to shew that the plaintiff is a *Hindusthani*, or a non-Bengalee, was really playing with the matter, and it could not have been that if



Plaintiff Kumar Ramendra Narayan Roy--after the
decree of his suit. (August 1936.)

it were not known that the plaintiff was a Bengalee, and, as will appear from other facts, the Kumar himself, I find that the plaintiff is a Bengalee.

Conclusion.

I have considered the whole evidence in the case with the utmost care, and the very able argument of learned Counsel on either side has missed, I believe, nothing material that could be urged for and against the identity. Everybody concerned was fully sensible of the gravity of the issue, and the difficulty of some of the questions that arose in this suit. On the question of identity a great deal might be inconclusive, but a single fact may be fatal, so that the case required the closest scrutiny, and the inquiry, as much precision as it was possible to attain.

I believe the direct evidence in support of the identity. It is the evidence of honest men and women, of all ranks and conditions of life, including nearly all the relations, and among them the sister, the 1st Rani, the 2nd Rani's own aunt, and her own cousin. The witnesses include a great many men of education and position, grave, elderly men, whom one would not suspect of romance, who are as afraid of ridicule as anybody, who have nothing to gain or lose and who could not possibly mistake the Kumar. It is impossible that these would commit perjury to support an impostor. But even this body of evidence need not rest on the credibility of the witnesses alone. It has satisfied every possible test. One test is the incontrovertible situation that arose on the 4th May, 1921, when the plaintiff declared that he was the 2nd Kumar of Bhowal. Nothing fits the facts of that day except honest recognition by the people who knew him. Even Rai Saheb (D. W. 310), the chief *tadbirkar* for the defence, who tried to support the false traits ascribed to the 2nd Kumar to

the utmost of his ability, had to admit that he believed on the 4th May, 1921, that the sister, and the sister's sons were honest in their belief that the Sadhu was the Kumar. He could not believe that, unless he believed it himself, for he had seen the Sanyasi, and had known the Kumar as well as anybody. The report of Mr. Needham which is really his own is the report of a believer; and I have pointed out the facts, and the considerations that exclude a sudden conspiracy, and a sudden adoption of a Punjabi, looking utterly different, and speaking a strange tongue, to play the role of the Kumar, the only theory left to the defence to explain the phenomenon, though it explains nothing, unless the sister had gone mad, and with her, the rest of the parganna. If the sister is honest, the other witnesses must be equally so.

Another test, in itself conclusive, is the identity of the body proved to demonstration, and with mathematical certainty, by the bodily features, all exceptional, and by the bodily marks, all exceptional, which rest on nobody's credibility. These, in their totality, cannot occur in a second individual, and even if half of the marks go off, the scaly feet, and the irregular scar on the top of the left outer ankle, coupled with the bodily features, will be enough to sustain the identity with equal certainty. An individual is a collection of accidents that never recur and that make it or him unique.

Nothing in the mind of the plaintiff shakes this conclusion. So much of it which the defendants ventured to expose confirms it. His handwriting confirms it. Nothing that took place at Darjeling could displace the conclusion, nor anything in the account given of the period of his disappearance. Even if he had come back maimed, and blind, and deaf, the conclusion will stand. The stuttering and the Hindi accent are equally indifferent.

Nothing before the 4th May, 1921, suggests a conspiracy nor anything in the conduct that followed. Since that date down to the date of suit, he was not hiding for a day. He was accesible to all comers, seen by numerous people, and cheered by a vast multitude of tenantry on the 15th of May, 1921. On the 29th May, 24 days after he declared his identity he appeared before the Collector of Dacca, spoke to him alone, prayed for an inquiry. From May, 1921, his sisters and his grand mother were petitioning the Collector for an inquiry, and he was prepared to be faced and questioned. He was giving infinite trouble, collecting rent, collecting *chanda*, and in 1929 and 1930 had brought collection by the estate to a standstill. He was not faced, or questioned, or prosecuted. Somebody wanted that he should not be faced, or questioned, or prosecuted, and that not a man of Dacca should be asked who he was. There is no doubt who that person was. He was Rai Satyendranath Banerji Bahadur, who has been enjoying his property, and to whom the return of the Kumar would be a calamity indeed. He knew even on the 6th May, two days after the plaintiff declared who he was when there was no knowing what support he was going to receive, that his only chance was to concentrate on death. He goes *post haste* to Mr. Lethbridge. He asks that the evidence of death should be saved. He hands to him the copies of the affidavits of death which he had been preserving. He goes to Darjeeling before the 15th May, 1921, to pin down the witnesses to a cremation which they had unsuspectingly joined, before memory had got to work and given meaning to things that had seemed odd. He took care to send to Mr. Lindsay the affidavit of death, and the evidence of cremation, and Mr. Lindsay, thus convinced of death, issued his declaration that the plaintiff was an impostor. Few impostors would survive this declaration.

It created the notion, shared by many witnesses, that the issue was not between the first defendant and the plaintiff, but between him and Government. The plaintiff handicapped by this declaration, survived it, and went about seeing people, receiving visitors, calling upon officials, with an inquiry in view, of which hopes were held out by Mr. Lindsay on the 29th May, 1921, and of which false hopes were held out by Mr. K. C. De in 1923. It was never expressly refused until 1927.

Mr. Chaudhuri, with some disregard of these facts, was pointing out the delay in instituting the suit, and suggesting that time was needed to fit the plaintiff to play the role. The plaintiff had himself asked Mr. Lindsay for an inquiry 24 days after he declared his identity, and his sisters had sent up a petition for inquiry even earlier. He has prepared to be faced, and questioned then, as always, and the inquiry, as I said, was never refused, and he was not told until 1927 that the Court was open. Then after an attempt to recover possession without suit, the suit was instituted in 1930. It is not an easy matter to sue the estate. And the cross-examination of the plaintiff shewed how far he has been tutored. He has been left exactly as he was, without even the knowledge of the alphabet.

While his proceedings from the beginning to the end were open, and above board what was the conduct of Satya Babu who is enjoying the property? This unfortunate man, the plaintiff, has been resisted with full knowledge that he is the Kumar, and as it turns out, with his own money. Conduct speaks and it cannot lie. One sees the dread of the Sanyasi even on the 6th May, 1921, two days after he declared he was the Kumar, that sends Satyendra Babu post haste to Mr. Lethbridge to save the evidence of death; the dread that sends him to Darjeeling before the 15th May to pin down the witnesses to a cremation; the dread

of the insurance doctor's report bearing the Kumar's bodily marks. It was seen in July, 1921. The defendants do not seize upon it to destroy the impostor. They do not call for it, and hope it will lie safely lodged in the company's office in Scotland. It is the alleged impostor who calls for it, and seizes upon it with alacrity just as he seized upon every other document that gave any personal detail. I see the same dread in framing the amazing requisition for the opinion of a handwriting expert. The Court of Wards, having started the inquiry, naturally collected materials from tailors and shoe-makers, and the results, so Satya Babu says, were handed to learned Counsel. Not a detail out of these materials was put, or proved, except size six for shoes, and this, learned Counsel was not instructed to put but was misled into putting as the plaintiff was present, and he thought his shoes looked big. There was the strange complaint after the plaintiff's examination was over that the man had reduced him to the difficulty of proving literacy, though he was prepared to prove learning, and that could only mean a regret that the literacy was needlessly pitched higher than the Kumar's true level, without foreseeing the lapse. Lastly, there was the deliberate omission to touch the memory in cross-examination on the pretext that the plaintiff had time to be primed. I have dealt fully with this before and all that I need repeat now is that it is the old policy of not questioning him carried right into court. The excuse was not stateable in 1921; and nobody has heard that tutoring is a ground for not cross-examining a witness. The dread was not of the trap, but of the truth. Nobody can long oppose the truth in a complicated case where facts are apt to emerge and demolish theories, without losing one's head, and somebody on the defendants' side had lost his head, and all sense of probability. The plaintiff looks utterly different.

He spoke a strange tongue. He was secured by the sisters. He was secured by one sister and denounced by the other. He was secured by nobody, but came a medicine man, by accident, and declared that he was the Kumar; and the family, thunder struck, threatened him. He was suddenly adopted by the sister, without preparation, not hidden, but put out in the open, and sent to the Collector to make his claim. Case after case was made in this fashion, ran a brief career, and perished in the stress of facts. Elaborate and carefully constructed cases, such as the case touching the illness and death at Darjeeling, were destroyed not only by internal marks of falsehood, but by single facts, firm as rock, like the hour of death, or diarrhoea with blood. The cremation in the morning—its nature—was revealed by the visit of Dr. Prankristo Acharya and by the absence of Kasiswari Debi bound up with the tale. The tea party, not put to the plaintiff, much less the admission there made, was demolished by a date. False traits, such as good education, English ways, English speech, were attributed to the Kumar, and false case as to every feature made, because truth would not distinguish him. Letters were forged to prove literacy to an extent that, if proved, will be as effective as death itself. The result was that although the defendants had a set of men, employees, and the like, who were prepared to say what was wanted, and it became perfectly obvious that the evidence was not shaping the case, but the case the evidence, it was impossible for them to sustain a Kumar so widely removed from reality. They had therefore the appearance of men repeating a part and what was happening may be well illustrated by the lesson book prepared for Babu Phani Bhushan Banerjee so that he might memorise and rattle off the words which the plaintiff did not know, and by the case put into the mouth of Dr. Ashutosh Das Gupta, regardless of his former testi-

mony. These are only some instances of the kind of disaster that was overtaking the defendants. It culminated in the attempt to substitute, by false evidence and by a false man, a photo of the plaintiff for the one shewn before Lt. Raghubar Singh.

It is no wonder that the Estate with all its resources have not found out in 12 years who the plaintiff is, although the plaintiff has been living at Dacca and Calcutta, and mostly at Dacca. Mr. Lindsay who ordered an inquiry in the Punjab did not know that there were agents at work to make every inquiry yield a given result, or that the Punjab report was based on a statement elicited by a photo, which bore the signature of Lt. Raghubar Singh, the Magistrate and which could not bear the light of day.

It is no wonder that the 2nd Rani's own people, people of position and wealth at Uttarpara, would not support her, except a clerk dismissed for dishonesty, and a cousin who came to deny the plaintiff, and denied him in the manner I described. Leaving aside the gentlemen who knew but have forgotten the Kumar, as they admit in effect, there is not a single independent and unbiased man who would swear that the plaintiff is not the Kumar.

I have fully discussed the position of the 2nd Rani.

She has no will of her own, so far as her brother is concerned. The income, the whole of it, is going to her brother—she has not even a banking account, though the income is nearly a lac of rupees. There is not a paper to shew that she keeps or is allowed to keep any money. There was nothing in the life of this childless lady at Jaidebpur, and in the memory of those days, to which she could look back with pleasure. The life she has got used to and the sense and pride of ownership she has felt so-

long, would estrange a husband who was a rake with filthy ulcers on his body. And when, at the top of all this, came the charge of poisoning telegraphed to her brother in May, 1921, she knew that she would be regarded as her brother's sister, not as Kumar's wife. To the brother the advent of the Kumar is the loss of a fine estate, and a calamity which he would try to avert at any cost; and I do not expect that the sister would stand in the way.

I find that the plaintiff is the Ramendra Narayan Roy, the second son of the late Rajah Rajendra Narayan Roy of Bhowal.

Issue 6.

The suit has been properly valued and stamped.

Issue 7.

This issue does not arise, as the suit, by reason of an amendment, is not a declaratory suit, but a suit for possession.

Issue 8.

The issue is framed thus: Is the plaintiff entitled to the reliefs claimed in the plaint, in view of the allegation made in the last part of the para 2 of the plaint?

The allegation there is that "the plaintiff nearly lost his memory of the past, and began to wonder from place to place with the Sanyasis, as one of their party, grew accustomed to the life of a Sanyasi, and indifferent to the world."

The facts, as alleged, has no legal consequence whatever. Renunciation of the world, when absolute, amounts to civil death, under the Hindu law. The passage does not say that he had been initiated into Sanyas, or that he

had absolutely retired from all earthly interests, and the passage also adds that the life he led was the result of loss of memory. Retirement into religious life must be a voluntary act to have the effect of death (see Mayne's Hindu Law, 7th Ed., page 801). The issue has been raised on this passage alone.

I should add that there is no evidence that the plaintiff was initiated into Sanyas, and had undergone the essential ceremony that makes him dead to the world. It is unnecessary to go fully into this matter, as the issue is rested upon the passage alone.

I find that what is alleged in this passage does not affect his title to the reliefs he claims.

Issue 9.

This issue does not arise upon the plaint as it came to be constituted.

Issue 2.

As to the limitation, the plaintiff was in possession of the property he claims till the 8th May, 1909, when he disappeared and was supposed to have died. The wife purported to succeed as a widow, and held what she believed was a widow's estate under the Hindu Law. The contention is that she has been in possession since May, 1909, and for more than 12 years before the suit, so that the suit is barred by limitation. Until the arrival of the plaintiff she was holding as Hindu widow, and assuming that her possession became adverse on the 4th May, 1921, the day on which the plaintiff declared he was the Kumar but was kept from possession, the suit was instituted within 12 years from that date. It is impossible to hold that during the disappearance of the plaintiff she was prescrib-

ing, as against him, for a widow's estate, believing all the time he was dead. She never asserted more than a widow's estate, and directly she concedes that, she concedes that she was holding it as his half, that being the theory under the Hindu Law, and the theory goes so far that upon her death, the heirs of the husband, such would be heirs, if the husband had died then, succeed. (*Sarat Ch. Mitra v. Charusila Dasi*, 55 Cal. 918). Adverse possession against the husband whom she purports to represent is, looking to the nature of the estate, an impossible notion. 'It will land one at the conclusion that upon her demise, the husband's heirs will take, though the husband was barred. It is not necessary for me to decide whether even after the date 4th or the 6th May, 1921, when the plaintiff was opposed, her possession could be adverse, seeing that she still insisted that she was retaining the same estate and not more. The suit is not barred by limitation.

I record my appreciation of the valuable assistance I received from learned Counsel on both sides. I had the full advantage of their experience and their scrutiny into the evidence, and I express my indebtedness to them for the help so ungrudgingly given, despite the great strain which this case must have imposed upon them.

The prayer is for confirmation of possession or recovery of possession, if the possession does not exist. Although I have found that the plaintiff did collect rent in 1930 and also at the Punyahas held after suit, that he has been ousted, is a fact, and this fact remains.

There is no question that if the plaintiff is the 2nd Kumar of Bhowal, he is entitled to an undivided share in the properties in suit, unless the suit is barred by limitation. I find he is entitled to this share in the suit properties.

There will be a decree declaring that the plaintiff is Kumar Ramendra Narayan Roy, the second son of the late Rajah Rajendra Narayan Roy of Bhowal, and directing that he be put in possession of an undivided one-third share in the properties in suit—the share now in the enjoyment of the first defendant—jointly with the other defendants' possession over the rest.

This decree is made *ex parte* against the defendant No. 2 and on contest, against the rest.

The plaintiff will get his costs from the contesting defendants, with interest at 6 per cent. per annum

(Sd.) PANA LAL BASU,

Addl. District Judge, Dacca.

24th August, 1936.

Appendix (A.)
(The plaint in the Suit)

(**আবজি**)

জিলা ঢাকার প্রথম সৰজজ আদালত

দেং নং ৭০ । ১৯৩০

কুমার শ্রীরমেশ্বরনারায়ণ রায় পিতা স্বর্গীয় রাজা রাজেন্দ্র
নারায়ণ রায় সাং জয়দেবপুর থানা জয়দেবপুর জিলা ঢাকা হাং
সাং ৪নং আরমানিটোলা থানা সুত্রাপুর ঢাকা বাদী—

বনাম—

১। রাজানুপালিতা শ্রীমতী বিভানতী দেবী পক্ষে কোর্ট
অব ওয়ার্ডের ম্যানেজার মিঃ E. Bignold, সাং জয়দেবপুর
থানা জয়দেবপুর জিলা ঢাকা মূল প্রতিবাদিনী—

রাজানুপালিতা ২। শ্রীযুক্তা সরযুবালা দেবী ৩। নাবালক
রামনারায়ণ রায় পক্ষে কোর্ট অব ওয়ার্ডের ম্যানেজার
মিঃ E. Bignold, ৪। শ্রীমতী আনন্দকুমারী দেবী পতি
স্বর্গীয় রবীন্দ্র নারায়ণ রায় সাং জয়দেবপুর, থানা জয়দেবপুর,
জিলা ঢাকা মোকাবিলা বিবাদীগণ

Declaratory ডিক্রী ও দখল স্থিরতরের বা দখল

পাইবার এবং মূল প্রতিবাদীর উপর চিরস্থায়ী নিষেধাজ্ঞা

পাইবার প্রার্থনায় ডিক্রেটারী ডিক্রী ও চিরস্থায়ী নিষেধাজ্ঞা
 পাইবার তায়দাদ ১০৫০০ টাকা ও দখল স্থিরতরের বা দখলের
 বিষয়ীভূত সম্পত্তির মূল্য মং ১৪২০০০ একুনে তায়দায় মোট
 ১৫২৫০০ ।

উপরোক্ত বাদী নিম্নলিখিত বর্ণনা করিতেছে :—

১। জিলা ঢাকা এবং ময়মনসিংহ প্রভৃতির অন্তর্গত
 পরগণে ভাওয়াল ও অন্যান্য পরগণা মধ্যে যে সমস্ত মৌজা
 আছে এবং যাহা সাধারণে ভাওয়াল রাজ্য বলিয়া অভিহিত
 করে উক্ত সম্পত্তি বাদী এবং তাহার পূর্বপুরুষগণের জমিদারী
 পত্তনি ইত্যাদি স্বত্ব দখলিয় হইতেছে। বাদীর পিতা স্বর্গীয়
 রাজা রাজেন্দ্রনারায়ণ রায় উক্ত সম্পত্তির মালিক দখিলকার থাকা
 কালে তাঁহার সম্পত্তি তাঁহার দেহান্তে বন্দোবস্ত জন্ম তাঁহার পত্নী
 রাণী বিলাসমণি দেবীকে ট্রাষ্টি নিযুক্ত করিয়া যান। রাজা
 রাজেন্দ্রনারায়ণ এবং রাণী বিলাসমণি দেবীর মৃত্যুর পর স্বর্গীয়
 রাজা রাজেন্দ্রনারায়ণের তিন পুত্র কুমার রনেন্দ্রনারায়ণ রায়,
 বাদী কুমার রমেন্দ্রনারায়ণ রায় এবং কুমার রবীন্দ্রনারায়ণ রায়
 উক্ত ভাওয়াল রাজ্যে সম অংশে স্বত্ববান ও দখিলকার হইলেন।
 দাবীকৃত সম্পত্তির পরিচয় নিম্ন তপসিলে লিপিবদ্ধ করা হইল।

২। গত ১৯০৯ সনের এপ্রিল মাসে বাদী তাঁহার পত্নী
 ১নং বিবাদিনী শ্রীমতী বিভাবতী দেবী এবং কতিপয় আত্মীয়
 ও কর্মচারী সহযোগে দার্জিলিং শৈলাবাসে বায়ু পরিবর্তনের
 জন্ম গমন করেন। দার্জিলিং অবস্থান কালে বাদীর শরীর

অসুস্থ হইলে বাদীর চিকিৎসাকালে বিষপ্রয়োগ নিবন্ধন বাদী অচেতন হইলে বাদীকে মৃত জ্ঞানে ১৯০৯ সালের ৮ই মে তারিখে রাত্রিকালে বাদীকে শ্মশানে লইয়া যাওয়া হয়। শ্মশানে লইয়া যাওয়ার পর অতিরিক্ত ঝড় বৃষ্টি হইলে বাদীর দেহ-বাহকগণ শ্মশানে বাদীর দেহ রাখিয়া স্থানান্তরে আশ্রয় গ্রহণ করেন। পরে ফিরিয়া আসিয়া বাদীর মৃত দেহ শ্মশানে না পাইয়া ফিরিয়া চলিয়া যান। ঐ ঘটনার কয়েক দিবস পরে বাদী চৈতন্য লাভ করিয়া তিনি আপনাকে নাগাসন্ন্যাসীগণের মধ্যে দেখিতে পান। এবং সন্ন্যাসীগণের সেবা ও শুশ্রূষাতে বাদী কতক পরিমাণে সুস্থ হইলে উক্ত সন্ন্যাসীগণের সহিত বাস করিতে থাকেন। তৎকালে বিষ প্রয়োগের ফলে বাদীর পূর্ব স্মৃতি লুপ্তপ্রায় হইয়াছিল। তিনি সন্ন্যাসীদের সহিত তাহাদের দলভুক্তের ন্যায় দেশ বিদেশ ভ্রমণ করিতে থাকেন। বাদী তৎকালে সন্ন্যাসী জীবনে অভ্যস্ত হইয়া সংসারে বিতৃষ্ণ হন।

৩। বাদীর অনুপস্থিতির সুযোগ লইয়া বাদী মৃত উল্লেখ্য বাদীর পত্নী ১নং বিবাদিনী শ্রীমতী বিভাবতী দেবী হিন্দু আইনের বিধান অনুসারে বাদীর অংশের জমীদারী প্রভৃতি ভোগ করিতে থাকেন। বাদী বর্ণনা করেন যে ১নং বিবাদিনীর উক্তরূপ ভোগ বাদীর জীবিত কালে বাদীর দখল বলিয়া পরিগণিত হইবে। পরে ১৯১১ সালের ২৮শে এপ্রিল তারিখে ১নং বিবাদিনীকে **disqualified proprietress declare** করিয়া বাদীর অংশ **Court of Wards charge** লয়েন।

৪। গত ১৯২১ সালের প্রথম ভাগে বাদী উপরোক্তরূপ ভ্রমণ করিতে ২ টাকা সহরে আসিয়া সম্ম্যসৌ-বেশে Buckland বাঁধে অবস্থান করিতে থাকেন। তথায় অবস্থান কালে বাদীকে ভাওয়ালের মধ্যম কুমার বলিয়া অনেকে চিনিতে পারেন ও অনেকে অনুমান করেন এবং পরে বাদীর আত্মীয় স্বজন এবং স্থানীয় জমিদারগণ বাদীকে মধ্যম কুমার বলিয়া নিশ্চিত জানিয়া বাদীকে আত্মপ্রকাশ জন্য পীড়াপীড়ি করেন তাহাতে বাদী আত্ম পরিচয় গোপন করিতে অক্ষম হইয়া নিজ পরিচয় প্রকাশ করেন এবং আত্মীয় স্বজনগণ তাঁহাকে সাংসারিক ব্যাপারে লিপ্ত হওয়ার প্রবৃত্তি লওয়ান এবং উক্ত ভাওয়াল রাজ্যের প্রজাগণ বাদীকে মধ্যম কুমার স্বীকার করিয়া খাজানা ও নজর দিতে থাকেন। তৎপর ১৯২১ সালের ১৬ই মে জয়-দেবপুর এক বিরাট সভা হয় এবং বাদীর আত্মীয় ও প্রজাগণ বাদীকে মধ্যম কুমার রমেন্দ্রনারায়ণ বলিয়া স্বীকার করেন এবং প্রজাগণ তাঁহাকে নজর ও খাজানা পূর্বানুরূপ সাধারণ ও প্রকাশ্যভাবে প্রদান করিতে থাকেন। এইরূপে বাদী আপন অংশের খাজানা ও নজর আদায় করিতে থাকিলে কোর্ট অব ওয়ার্ডের খাজানা আদায় সম্বন্ধে বাধাও বিঘ্ন হওয়ায় ১নং বিবাদিনীর এবং তাহার ভ্রাতার ষড়যন্ত্র মূলে ও প্ররোচনায় ঢাকার তৎকালীন কালেকটর Mr. Lindsay গত ১৯২১ সালের ৩রা জুন তারিখে এক declaration নিম্নলিখিত মর্মে প্রচার করেন।

নোটিশ।

এতদ্বারা ভাওয়াল ষ্টেটের সমস্ত প্রজাবর্গকে জানান যাইতেছে যে রেভিনিউ বোর্ড সিদ্ধান্ত প্রমান (*conclusive proof*) পাইয়াছেন যে ভাওয়ালের দ্বিতীয় কুমারের মৃত দেহ ১২ বৎসর পূর্বে দার্জিলিং সহরে ভগ্নসাৎ হইয়াছিল। সুতরাং যে সাধু দ্বিতীয় কুমার বলিয়া পরিচয় দিতেছে সে প্রতারক যে কেহ তাঁহাকে খাজানা এবং চাঁদা দিবেন তিনি তাহার নিজের ঝুকিতে দিবেন।

বোর্ড অব রেভিনিউর অনুমত্যানুসারে

জে, এইচ, লিওসে, কালেকটর

ঢাকা ৩৬২৯

বাদী বর্ণনা করেন যে (বোর্ডের নিম্নলিখিত *resolution* এর স্বীকৃত মতেই) বাদীর *identity* সম্বন্ধে পূর্বে কোন তদন্ত না হওয়ায় ও তদ্রূপ তদন্ত কি স্বাক্ষর প্রমাণ লওয়া বোর্ডের কোনরূপ ক্ষমতা না থাকায় উক্ত *declaration* অমূলক এবং ভিত্তিশূন্য ও *ultravires* বটে।

৫। উপরোক্ত *declaration* বাদীর অসাক্ষাতে হওয়ায় বাদী মহামান্য বোর্ডে গত ১৯২৬ সালে ৮ই ডিসেম্বর তারিখে এক *memorial* দাখিল করেন। উক্ত *memorial* ১৯২৭ সালে ৫৪ নম্বরে রেজিষ্টারী ভুক্ত হইয়া বাদীর পক্ষে এবং বিবাদীগণের পক্ষের বক্তৃতার পর গত ১৯২৭ সালের ৩০শে মার্চ তারিখের মহামান্য বোর্ডের *resolution* নম্বর ৩৭১৫W অনুসারে

বাদীর memorial অগ্রাহ্য হয়। উক্ত resolutionএ প্রজা-সাধারণের নিকট বাদীর খাজনা এবং নজর আদায় স্বীকার আছে এবং মহামান্য বোর্ড আরও স্বীকার করিয়াছেন যে বাদীর identity সম্বন্ধে তাঁহারা কোন তদন্ত করেন নাই। কিম্বা তদরূপ বা কোনরূপ তদন্ত করিবার কি সাক্ষী সাবুদ লইবার বোর্ডের কোন ক্ষমতা নাই।

৬। বাদী আপন অংশের সম্পত্তি হইতে প্রজাগণের নিকট খাজনা ও নজর আদায় করিতে থাকিলে গত ১৯২৯ সালের এপ্রিল মাসে ঢাকার কালেকটর Mr. O. M. Martin বাদীর নাম সুন্দর দাস ওরফে ভাওয়াল সন্ন্যাসী উল্লেখে ফৌজদারী কার্য্য বিধি আইনের ১৪৪ ধারার বিধান মতে নিম্ন-লিখিত মর্মে এক নোটিশ জারী করেন—

To

Sundar Das alias the Bhowal Sannyashi,
Dacca.

Whereas it has been made to appear to me that you intend to go to Jaidebpore and whereas your presence there would cause obstruction and annoyance to persons lawfully employed i. e. the officers of the Bhowal Court of Wards Estate, and possibly a disturbance of the public tranquility. I do hereby forbid you to enter the Jurisdiction of Joydebpore Police Station.

You may appear and show cause against the order on or before the 11th. May, 1929.

Given under my hand and the seal of the court, this 24th. day of April 1929.

Sd/- O. M. Martin.

District Magistrate, Dacca.

৭। বাদী উক্ত নোটিশ তাহার প্রতি জারী হইয়াছে বিশ্বাস করিয়া তাঁহার নাম সুন্দর দাস নহে, এবং তিনি ভাওয়ালের মধ্যম কুমার রমেন্দ্রনারায়ণ রায় উল্লেখ করিয়া এবং জয়দেবপুরে তাঁহার নিজ বাটীতে যাওয়ার অধিকার থাকা উল্লেখ করিয়া আপত্তি দাখিল করেন। উক্ত মোকদ্দমায় Magistrate সাহেব বাদীর এজাহার গ্রহণকালে বাদী অন্ত্যাত্ম বর্ণনার সহিত নিম্নলিখিত বর্ণনা করেন :—

“I claim the Bhowal Estate. The property belong to my father. I left Jaidebpore in the year 1316 B. S. I came back to Jaidebpore after 12 years. The Kashimpore Zaminder took me there. From there I was brought by Jogen-dra Banerjee to Jaidebpore. He sent elephant for me. I got Nazar from the tenants. They gave it to me voluntarily then as now. Even now I get Nazar + + +. They come themselfe and give Nazar. They come to Dacca and give it. All the tenants believe me to be the Kumar.

They are willingly paying me rent. I am not forcing them to make any payment + + +
! am not willing to give up my claim to my

paternal property. I am not willing to stop receiving rent + I do not intend to go to Jaidebpore in the near future.

৮। পরে Magistrate সাহেব উক্ত ১৪৪ ধারার হুকুম ৩০।৫।২৯ তারিখে রহিত করেন। উক্ত হুকুম হওয়ার পরে বিবাদী পক্ষের লোকের উক্তি ও ব্যবহারে বাদী আশঙ্কা করেন যে তিনি জয়দেবপুর গেলে তাহার উক্তস্থানে যাওয়ার পক্ষে বিঘ্ন ও বাধা জন্মাইবে। এবং উক্ত কারণে বাদী ইচ্ছাসত্ত্বেও জয়দেবপুর যাইতে আশঙ্কা করেন।

৯। পরে বাদী আপন অংশের সম্পত্তির খাজনা প্রজাগণ বাদীর পক্ষী বিভাবতী দেবীকে বা তাহার পক্ষে কোর্ট অব ওয়ার্ডের ম্যানেজারকে না দেয় এই মর্মে ভাওয়াল প্রজা-সাধারণের মধ্যে গত ১৯২৯ সালের সেপ্টেম্বর মাসে নোটিশ প্রচার করেন।

উক্ত নোটিশ প্রাপ্তির পর প্রজা সাধারণ বাদীর অংশের দেয় খাজনা বাদীকে পূর্বানুরূপ দিতেছেন এবং কোর্ট অব ওয়ার্ডের ম্যানেজারকে ঐ অংশের খাজনা দিতে অস্বীকার করিয়াছেন এবং কোর্ট অব ওয়ার্ডের ম্যানেজারকে খাজনা দেওয়া বন্ধ করিয়াছেন। এ মতে বাদী আপন অংশের জমিদারী প্রভৃতিতে সম্পূর্ণরূপে দখিলকার আছেন। কিন্তু ১নং বিবাদিনীর তরফ মহালের স্থানে স্থানে লোক প্রেরণ করিয়া বাদীকে খাজনা না দেওয়ার জন্য নানারূপ বাধা ও বিঘ্ন জন্মাইবার চেষ্টা করিতেছেন। বাদীর খাজনা আদায়ের নিম্ন

প্রদান করিবার জ্ঞা এবং প্রজাদের নির্যাতন ও ভীতি প্রদর্শন করার জ্ঞা ১নং বিবাদিনী এবং তাহার পক্ষে কোর্ট অব ওয়ার্ডের ম্যানেজার অবৈধভাবে প্রতিবাদিগণের তরফ বে-আইনী এবং illegal certificate জারী করিতেছেন। আনন্দকুমারী দেবীর তরফ যে certificate জারী হইতেছে তাহা আদৌ without jurisdiction ultravires এবং invalid উক্ত সার্টিফিকেট জারী হওয়া সত্ত্বেও বাদীর দখল অক্ষুণ্ণ আছে।

১০। বাদী বর্ণনা করিতেছেন যে ১নং বিবাদিনী এক্ষণে অন্ত্রায় লোভের বশবর্তী হইয়া এবং অসৎ লোকের পরামর্শে বাদীকে না দেখা সত্ত্বেও বাদীর identity অস্বীকার করিতেছেন। এবং কোর্ট অব ওয়ার্ডের সাহায্যে বাদীর দখল এবং বাদীর বসতবাটী জয়দেবপুরে যাওয়ার সম্বন্ধে বিঘ্ন ও বাধা ঘটাইবার উদ্দেশ্যে নানারূপ উপায় অবলম্বন করিতেছেন। ২নং বিবাদিনী স্বয়ং বাদীর identity স্বীকার করিয়াছেন এবং করিতেছেন। কিন্তু তাঁহার সম্পত্তি কোর্ট অব ওয়ার্ডের হস্তে থাকায় তাঁহার ম্যানেজার মিঃ E. Bignold বাদীর identity অস্বীকার করিয়া বাদীর খাজানা আদায়ে বাধা প্রদানের চেষ্টা করায় তাহাকে পক্ষভুক্ত করা গেল। ৩নং প্রতিবাদী বাদীর কনিষ্ঠ ভ্রাতা মৃত কুমার রবীন্দ্রনারায়ণ রায়ের পোষ্য পুত্র উল্লেখ কতক কতক সম্পত্তি দখল করিতেছে। এবং ৪নং বিবাদিনী শ্রীমতী আনন্দকুমারী দেবী উক্ত কুমার রবীন্দ্র নারায়ণের বিধবা পত্নী হইতেছেন। বাদী উক্ত পোষ্য পুত্র

বৈধ কি অবৈধ জ্ঞানেন না। কিন্তু বাদী অবগত হইয়াছেন যে উক্ত পোষ্যপুত্র রদ্ সম্বন্ধে ঢাকার ২য় সবজজ আদালতে ১৯২৫ সালের ২১৬নং মোকদ্দমা দায়ের আছে। উক্ত পোষ্যপুত্র বৈধ কি অবৈধ বর্তমান মোকদ্দমায় তাহার বর্ণনা নিম্নয়োজন। ৩৪নং বিবাদী বাদীর identity প্রকাশভাবে deny না করিলেও তাহাদের কার্যকলাপে এবং তাহাদের পক্ষীয় লোক ও কর্মচারীগণের উক্তি ও ব্যবহারে তাহারাও বাদীর identity ভাবতঃ অস্বীকার করা অসম্মিত হইতেছে বলিয়া তাহাদের সাক্ষাতে বর্তমান মোকদ্দমা বিচার হওয়া আবশ্যক বিবেচনায় তাহাদিগকে পক্ষ করা গেল। তাহারা বাদীর দাবীর বিরুদ্ধে উত্তরদায়ক হইলে তাহাদিগকেও মূল বিবাদীগণে বাদী তাহাদের বিরুদ্ধেও আরজির প্রার্থিত প্রতিকার দাবী করিতেছে।

১১। বাদী বর্ণনা করিতেছেন যে উপরোক্ত অবস্থাদীনে বাদীর status সম্বন্ধে ১নং বিবাদিনীর কার্যের এবং উক্তিরদ্বারা cloud thrown হওয়ায় তাহার status declared হওয়া আবশ্যক। এবং মূল বিবাদিনী যাহাতে বাদির দখল সম্বন্ধে এবং বাদীর বসত বাটীতে যাওয়া সম্বন্ধে বিঘ্ন ঘটাইতে না পারে তাহার জ্ঞান চিরস্থায়ী নিষেধ আজ্ঞা প্রচার হওয়া আবশ্যক।

১২। বাদীর বর্তমান মোকদ্দমার cause of action বোর্ডের resolution এর তারিখ ৩০/৩/১৯২৭ হইতেও তৎপর ক্রমাধয়ে উদ্ভব হইয়াছে। ডিক্লারেটারী ডিক্রী with consequen-

tial relief নিষেধ আজ্ঞার মূল্য ১০৫০০ টাকা খরিয়। তাহার উপর ৭৭১৮০ টাকা কোর্ট-ফি দিয়া বাদী বর্তমান নালিশ দায়ের করিতেছেন। দখল স্থিরতরের বা দখল পাওয়ার প্রতিকারের বিষয়ীভূত সম্পত্তির মূল্য ১৪২০০০ টাকা, উক্ত সম্পত্তির সদর রাজস্ব ঘোল আনীতে ৪২৪২৬।৮/৩ পাই বাদীর এক তৃতীয়াংশে ১৪১৪২৮/১ পাই তাহার দশগুণ ১৪১৪২১১০ পাই বটে আদালতের ন্যায় বিচারে, উক্ত এক তৃতীয়াংশ রাজস্বের দশগুণের উপর কোর্ট ফি দেওয়া সঙ্গত বিবেচিত হইল, উক্ত কোর্ট ফি বাটী হইতে গ্রহণে বাদী তদ্রূপ প্রতিকার পাওয়ার প্রার্থনা করিতেছে। আত্রা-দালতের এলাকায় বাদীর নালিশের কারন পুনঃ পুনঃ উদ্ভব হইয়াছে।
এ মতে প্রার্থনা—

(ক) বাদী ভাওয়ালের রাজা স্বর্গীয় রাজেন্দ্রনারায়ন রায়ের মধ্যম পুত্র কুমার রমেন্দ্রনারায়ন রায় বলিয়া প্রচার করিবার আজ্ঞা হয়।

(ক ১) নিম্ন তপছিলের সম্পত্তির এক তৃতীয়াংশ বাদীর দখল স্থিরতর রাখিতে বা প্রমান ও অবস্থানুসারে বাদীর দখল না থাকা সাব্যস্ত হইলে উক্ত সম্পত্তির উক্ত অংশে বাদীকে দখল দেওয়াইতে এবং তদবস্থায় বাদী হইতে অতিরিক্ত কোর্ট-ফিস গ্রহণ তদ্রূপ ডিক্রী দেওয়াইতে—

(খ) উক্ত রাজা রাজেন্দ্রনারায়নের ত্যক্ত ও পরবর্তী সময়ে অজ্ঞাত সমুদয় ভাওয়াল রাজ্যের অর্থাৎ নিম্নতপছিলের যাহার

পরিচয় বিশেষরূপে দেওয়া হইল, তাহাতে এক তৃতীয় অংশে বাদীর দখলের কোনরূপ বিঘ্ন জন্মাইতে না পারে তন্মর্মে ১নং বিবাদিনীর উপর চিরস্থায়ী নিষেধ আজ্ঞা জারী করিবার আজ্ঞা হয়

(গ) মোকদ্দমা মূলতবী থাকাকালে বিবাদীগন যাহাতে বাদীর দখল সম্বন্ধে কোনরূপ বিঘ্ন জন্মাইতে না পারেন, তন্মর্মে বিবাদীগনের উপর অস্থায়ী নিষেধ আজ্ঞা প্রচার করিবার আজ্ঞা হয়।

(ঘ) মোকদ্দমার অবস্থা ও বিবরণ মতে বাদী অন্যান্য যে কোন প্রতীকার পাইবার হক্‌দার তাহা ডিক্রী দিতে আজ্ঞা হয়।

(ঙ) মোকদ্দমার সমস্ত খরচ বাদীর অনুকূলে ডিক্রী দিবার আজ্ঞা হয়।

তপছিল (বাদ) SCHEDULE (OMITTED)

N. B. The underlined portions are amendments to the original plaint.

English translation of the plaint is not given here as the summary of it has been given in English by the learned judge in the judgment. (See page 5—8 of this volume).

Written Statement,

(বর্ণনা)

Filed 25-10-30.

First Sub Judge's Court Dacca.

Filed

25, Oct 1930

Sd/ Illegible

শ্রীঅনন্দেরাম দেবী
By Sd. M. N. Ganguly, Pl.
By Sd. B.K.Guha, Pl.

জিলা ঢাকার ১ম সবজজ আদালত

দেঃ মোঃ নং ৭০ । ১৯৩০ ।

তথাকথিত শ্রীরমেন্দ্রনারায়ণ রায়

বাদী

বনাম

শ্রীযুক্তা বিভাবতী দেবী গং

বিবাদী

উক্ত মোকদ্দমায় ৪নং বিবাদিনীর বর্ণনা।

- ১। বাদীর নালিশের কোন হেতু কি অধিকার নাই।**
- ২। বাদীর দাবী তামাদিতে বারিত্ত বটে।**
- ৩। আরজির বর্ণিত ও দাবীকৃত সম্পত্তির বাজার মূল্য অন্যান্য মঃ ৫০০০০০০/- লক্ষ টাকা বটে। উক্ত মূল্যের উপর**

advalorem কোর্টফি না দিয়া এবং দাবীকৃত সম্পত্তিতে স্বহ-
সাব্যস্থ পূর্বক দখলের প্রার্থনা না করিয়া বাদীর বর্তমান দাবী
আইনতঃ চলিতে পারে না বিধায় বর্তমান আর্জি মূলে বাদী কোন
প্রতিকার পাইতে অধিকারী নহে ।

৪। আর্জিতে বাদীর যে নাম ও পরিচয় লিপিকরা হইয়াছে
তাহা সম্পূর্ণ মিথ্যা এবং এই বিবাদিনী তৎসমস্ত দৃঢ়রূপে অস্বীকার
করিতেছে । বাদী রাজা রাজেন্দ্রনারায়ণ রায় বাহাদুরের দ্বিতীয়
পুত্র রমেন্দ্রনারায়ণ রায় থাকা কি হওয়ার উক্তি সমূলে মিথ্যা,
বানোয়টী ও ফেরেবী বটে ।

৫। ভাওয়ালের দ্বিতীয় কুমার ৮রমেন্দ্রনারায়ণ রায় মহাশয়
তাহার স্ত্রী অর্থাৎ ১নং বিবাদিনীকে সহ স্বাস্থ্য পরিবর্তন জন্য
দার্জিলিং গিয়াছিলেন । তৎ ব্যতীত আরজির ২য় দফার বর্ণিত
অন্য সমস্ত উক্তি সম্পূর্ণ অলিক বটে । এই বিবাদিনী বিশ্বাস করে
যে উক্ত দ্বিতীয় কুমার দার্জিলিং যাইবার অল্পকাল পরে তথায়
পরলোক গমন করিয়াছিলেন । এই বিবাদিনী অবগত আছে যে
তদন্তর জয়দেবপুর রাজ বাটীতে তাহার প্রাঙ্গাদী কৰ্ম্ম যথা শাস্ত্র
নিষ্পন্ন হইয়াছিল ।

৬। আরজির ৪র্থ দফায় বাদী তাহাকে ভাওয়ালের মধ্যম
কুমার বলিয়া অনেকে চিনিতে পারা প্রভৃতি যে সমস্ত উক্তি
করিয়াছে তাহা এই বিবাদিনী সত্য বলিয়া স্বীকার করে না ।
এবং তৎসমস্ত মিথ্যা বলিয়া এই বিবাদিনী বিশ্বাস করে ।
ভাওয়ালের প্রজাবর্গ কিন্না ভাওয়াল রাজ পরিবারের আত্মীয়
স্বজন কেহই বাদীকে কুমার রমেন্দ্রনারায়ণ রায় মহাশয় বলিয়া

চিনিতে পারেন নাই পরন্তু এই বিবাদিনী অবগত হইয়াছে ও বিশ্বাস করে, রাজা রাজেন্দ্র নারায়ণ রায় বাহাদুরের মাতা ৮ স্বর্গীয়া রাণী সত্যভামা দেবী এবং তাহার মধ্যম কন্যা শ্রীযুক্তা জ্যোতির্ময়ী দেবী যিনি উক্ত কুমার রমেন্দ্র নারায়ণ রায় মহাশয়ের বয়োজ্যেষ্ঠ বটেন, তাহারা উভয়ে বাদী যে সময়ে জয়দেবপুরে প্রথম উপস্থিত হইয়া ছিলেন সেই সময়ে তাহাকে টাকা দিয়া প্রণাম করিয়া ছিলেন। এবং বাদী তাহা গ্রহণ করিয়াছিল। বাদী ছরভিসন্ধি মূলে উক্ত ঘটনা গোপন করিয়াছে। বাদী অধুনা কোনও ব্যক্তি তাহাকে মধ্যম কুমার বলিয়া চিনিতে পারা বা তদ্রূপ ব্যবহার করা প্রভৃতি যে উক্তি করিয়াছে তাহা সম্পূর্ণ মিথ্যা।

৭। আর্জির ৫ম ও ৬ষ্ঠ ও ৭ম দফার বর্ণিত বিবরণ সমূহ কিছুই এই বিবাদিনী অবগত নহে এবং ৮ম ও ৯ম দফার বিবরণ সত্য বলিয়া স্বীকার করে না।

৮। আর্জির ১০ম দফার উক্তি সমূলে মিথ্যা ও অভিসন্ধি মূলক ১নং বিবাদিনী বাদীকে দেখিয়াছেন এবং তাহাকে প্রতারক বলিয়া স্থির সিদ্ধান্তে উপনিত হইয়াছে। বাদী যে উক্তি করিয়াছে যে ২নং বিবাদিনী বাদীর identity স্বীকার করিয়াছেন ও করিতেছেন, তাহা এই বিবাদিনী অবগত নহে ও সত্য বলিয়া স্বীকার করেনা। ৩নং বিবাদীকে এই বিবাদিনী দত্তক গ্রহণ করা সম্বন্ধে এবং অত্যাচার কারণে এই বিবাদিনী ও তাহার দত্তক পুত্র ৩নং বিবাদির সহিত ২নং বিবাদিনী শ্রীযুক্তা সরযুবালা দেবীর মনোবাদ হইয়াছিল এবং তদবদি এই বিবাদিনী ও ৩নং বিবাদীর সহিত উক্ত ২নং বিবাদিনী নানারূপ বিরোধ ও শত্রুতা চলিয়া

আসিতেছে। এই বিবাদিনী অমুমান করে যে ৩নং বিবাদির ভাবি স্বত্ব নষ্ট করিবার উদ্দেশ্যে উক্ত ২নং বিবাদিনীর বাদির সহিত যোগদান করা সম্ভব। বাদী এই বিবাদিনী সমন্ধে যে উক্তি করিয়াছে তদ্বত্তরে এই বিবাদিনী নিবেদন করে যে এই বিবাদিনী বাদীকে দেখিয়াছে এবং বাদী যে ভাওয়ালের কুমার রমেন্দ্রনারায়ণ রায় নহে তাহার সম্পূর্ণ প্রতিভী হইয়াছে।

৯। ভাওয়াল রাজ ষ্টেট কোর্ট অব ওয়ার্ডের শাসনধীনে হওয়ার পূর্বে ভাওয়াল রাজ পরিবারের অনেক আত্মীয় স্বজন এবং ছুরসম্পর্কিত ও নিসম্পর্কিত লোক ভাওয়াল ষ্টেট হইতে অন্ন বস্ত্র ও নানারূপ সাহায্য পাইয়া আসিতেছিল কিন্তু ভাওয়াল রাজ ষ্টেট কোর্ট অব ওয়ার্ডের শাসনাধীনে হওয়ার পর হইতে ঐ সমস্ত আত্মীয় স্বজন ও নিঃসম্পর্কিত ব্যক্তিবর্গ পূর্বের ন্যায় সাহায্য পাওয়া হইতে বঞ্চিত হয়, এবং তদ্রূপ উক্ত ব্যক্তিবর্গ নিতান্ত মনক্ষুব্ধ হয়। বিশেষতঃ ১৯১১ সনে ১নং বিবাদিনীর ষ্টেট কোর্ট অব ওয়ার্ডে যাওয়ার পর হইতে ১নং বিবাদিনী নিরবচ্ছিন্ন ভাবে কলিকাতা বাস করিতেছেন এবং পূর্বোক্ত আত্মীয় স্বজন ও স্থানীয় লোক গুরু পুরোহিতকে তিথি পার্বন ও ত্রীয়া কলাপে নিমন্ত্রণ এবং লৌকিকতা কিম্বা কোন রূপ সাহায্যদি না করায় ১নং প্রতিবাদিনী তাহাদের কতকের বিশেষ বিরাগ ভাজন হইয়াছেন।

১০। স্বর্গীয় রাজা কালীনারায়ণ রায় বাহাদুর তদীয় কন্যা ৮কুপাময়ী দেবীকে কতক সম্পত্তি জীবন স্ত্র মূলক মিরাস বন্দোবস্ত দিয়াছিলেন গত ১৩২৭ সনে বৈশাখ মাসে নিঃসন্তান

অবস্থায় কৃপাময়ী দেবী পরলোক গমন করায় উক্ত বন্দোবস্তের পাট্টা সমূহের সর্ত্তানুসারে ভাওয়াল রাজ ষ্টেটের পক্ষে কোর্ট অব ওয়ার্ড ৮ কৃপাময়ী দেবীর ষ্টেট কোর্ট অব ওয়ার্ডের শাসনাধীনে হওয়ার ঘোষণা করিলে তৎপর হইতে উক্ত সম্পত্তি নিয়া ভাওয়াল কোর্ট অব ওয়ার্ডের সহিত কুমার ত্রয়ের ভগ্নিগণ, ভাগিনেয়গণ ও কৃপাময়ী দেবীর সতীন পুত্রগণ সহিত শত্রুতা ও মামলা চলিতেছে। কুমার ত্রয়ের উক্ত ভগ্নিগণ জয়দেবপুর রাজবাড়ী হইতে কোর্ট অব ওয়ার্ড কর্তৃক তাড়িত হয় এবং তাহারা ভিন্ন স্থানে যাওয়া বসবাস করিতে বাধ্য হইলেন। তাহারা রাজবাড়ীতে ও রাজষ্টেটে নিজেদের আধিপত্য বিস্তার জন্য ও কোর্ট অব ওয়ার্ডের প্রতি বিদ্বেষ বশতঃ কতিপয় লোকের পরামর্শে ও সাহায্যে পাঞ্জাব দেশবাসী জনৈক সন্তানীকে উৎকোচ ও নানা প্রলোভন দ্বারা বশীভূত করিয়া তাহাকে দ্বিতীয় কুমার বলিয়া setup করিয়াছেন বলিয়া এই বিবাদিনী বিশ্বস্ত সূত্রে অবগত হইয়াছে ও বিশ্বাস করিতেছে। বিশেষতঃ বিগত ১৯১৯ সনে ৩ নং বিবাদীকে এই বিবাদিনী দত্তক গ্রহণ করায় ভাওয়াল ষ্টেট সম্পর্কে উক্ত কুমার ত্রয়ের ভাগিনেয়গণের ও তদুহেতু তাহাদের আত্মীয় স্বজনের ভবিষ্যৎ আশা সমূলে বিনষ্ট হয়। এই বিবাদিনী বিশ্বাস করে যে উক্ত কুমার ত্রয়ের উক্ত ভগিনী ও ভাগিনেয়গণ উদ্দ্যোগী হইয়া বর্ত্তমান বাদীকে ভাওয়াল রাজষ্টেটের এক অংশে স্বত্ববান উল্লেখ উপস্থিত করিয়া এই অলিক দাবীযুক্ত মোকদমা উত্থাপন করিয়াছেন। প্রকৃত পক্ষে বাদী কখনই ভাওয়ালের দ্বিতীয় কুমার নহে কি হইতে পারে না।

সে একজন impostor বটে এবং কোর্ট অব ওয়াড কর্তৃক
দে জ্যুডাবে impostor declared হইয়াছে। বর্তমান
মোকদ্দমা আক্কেশ বড়যন্ত্র মূলক।

১১। এই বর্ণনার ভাব মর্ম ও স্বীকৃত বিবরণের বিরুদ্ধে
ও বিপর্যয়ে আর জঁর কোনও উক্তি এই বিবাদিনী সত্য বলিয়া
স্বীকার করে না।

১২। উপরি উক্ত অবস্থাও করনাধীনে বিনীত প্রার্থনা এই
যে বাদীর অলীক ও বে-আইনী ও ফেরেবী দাবী ডিসমিস্ ক্রমে
বাদীর বিরুদ্ধে এই বিবাদিনীর আদালত ব্যয় ডিক্রী দিয়া সুবিচার
করিতে আজ্ঞা হয়। ইতি

এই বর্ণনার ১৪৭।১০।১১।১২ দফা এবং আংশিক ৫।৬।৮।৯ দফার
উক্তি আমার জ্ঞান মতে ও ২।৩ দফা ও আংশিক ৫।৬।৮।৯ দফার
উক্তি আমার অনুসন্ধান ও বিশ্বাস মতে সত্য। অতঃ কলিকাতা
নিজ ভাড়াটিয়া ৪৫।৪ এ নং চক্রবেড় রোডে (Souti)
হাবেলীতে বসিয়া এই সত্যতায় দস্তখত করিলাম। ইতি
১৯৩০ সন ২১শে অক্টোবর।

Sd/ শ্রীআনন্দ কুমারী দেবী

N. B. Its English translation is not given here as its Summary
has been given by the Judge in English of the volume.

(See page 8 to 9 of the volume)

Written Statement.

(Filed on 9-9-1930.)

In the Court of the 1st. Sub Judge,
Dacca.

T. S. No. 70 of 1930.

Kumar Romendra Narayan Roy—
Plaintiff.

VS.

Srj, Bibhabati Debi and others—
Defendants.

Sreejukt Bibhabati Debi & Sreeman
Ram Narayan Ray Chowdhury,
Wards of Court of Wards by
their Manager Sd. E. Bignold
By Sd. P. C. Ghosh, advocate

Written statement on behalf of defendant No. 1 and
3 is as follows :—

1. That the plaintiff has no cause of action nor has he any right to sue.
2. That the suit is barred by limitation.
3. The plaintiff never owned or possessed any property nor does he own or possess any property belonging to the Bhowal Estate. The defendant No. 1 has been owning and possessing one third share of the Bhowal Estate for long over 12 years in her own right and by right of adverse possession and the allegation to the contrary made in paragraph 3 of the plaint are false. The defendant states that she has held the said one third share on her own behalf as owner and assuming

that plaintiff was the owner of the said share (which is contrary to fact) his right if any has been completely extinguished by the lapse of time.

4. That the suit is barred under the provisions of Estoppel waiver and Acquiescence.

5. That the suit is not maintainable in its present form.

6. That the suit is barred by Section 42 of the Specific Relief Act and is not maintainable without a prayer for possession.

7. That the suit is not maintainable without giving a schedule or Particulars of Properties.

8. That the suit has not been properly valued and sufficiently stamped.

9. That the allegations that the plaintiff is Kumar Romendra Narayan Roy of Joydebpur, Dacca, and that the plaintiff or his predecessors has or had ever owned and possessed the Bhowal Estate are absolutely false and denied by the defendants. The allegation that the plaintiff *was or is in possession of any part of share of the Bhowal Estate is absolutely false.* He is not a Bengalee much less a member of the Bhowal Raj family, never knew the Bengali language and even now after a strenuous attempt for nearly 10 years since 1921 and with the assiduous endeavour of a number of designing persons who have set him up for their own

interest have now got this suit filed in his name has not been able to learn the Bengali language or to talk properly in the language like a Bengalee even at the present moment.

10. The plaintiff having on his own admission, become an ascetic and having relinquished the world he in the eye of the law, has lost all his rights alleged by him and is not entitled to claim any of the reliefs in the suit.

11. That all the allegations contained in paragraph 2 of the plaint are maliciously false and that to the knowledge of the Plaintiff.

12. That the Second Kumar of Bhowal was ailing for sometime and in 1909 went to Calcutta for medical treatment. He was there treated by some eminent doctors and was advised to proceed to Darjeeling for a change. He then returned home and shortly left for Darjeeling accompanied by his wife, the defendant No 1 his brother-in-law, Rai Sahib Satyendra Nath Bannerjee, the family physician Dr. Asutosh Das Gupta his private Secretary late Babu Mukunda Lal Guin, his officer and relation Babu Birendra Chandra Bannerjee and some other officers and servants. There he was placed under the treatment of the Civil Surgeon Col. J. T. Calvert, I. M. S. and the then Assistant Surgeon the Late Rai Nibaran Chandra Sen Bahadur, having

had an acute attack of billiary colic, of which he was suffering for sometime. The treatment was of no avail and he died on the 8th May, 1909, at about midnight, inspite of the best endeavours of his wife, relations and physicians to save his life.

13. The Kumar died as already stated on the 8th May, 1909 and on the 10th May Col. Calvert sent the following letter of condolence to the eldest Kumar Ronendra Narayan Roy, husband of defendant No. 2 Sarajubala Devi at Joydebpur :—

My dear Kumar,

Please accept my sincere condolence in the great loss which you have sustained through the death of your kindhearted and amiable brother. I am afraid that his sudden death must be attributed to a little over confidence on his part regarding the nature of his illness and its probable termination. The morning I was called in he felt so much better that he declined the treatment I proposed, even the earnest solicitation and exhortation of his private Secretary and friends who were most solicitous concerning his condition failed to move him. Later in the day he had a relapse the colic coming on in a most intense form. His Secretary with persistant zeal himself went round the station until he had found me on my round and secured my early attention to the

case. This time he listened to the advice of the Secretary and his friends and allowed me to adopt the right treatment. The colic quickly ceased under the hypodermic medication, but unfortunately his system had received such a shock in the interval that he sank and died from collapse in spite of all endeavours. All that was possible was done to save your brother's life and he received the greatest care and attention from those about him. It would have been a great boon if he could have had his friends around him but the exacerbation of his illness came on so suddenly and terminated so quickly it was not possible. He had had milder attacks of this before and it was his recovery from this which prevented him realising the serious nature of the last one before it was too late.

Yours Sincerely,

Sd. J. T. Calvert''.

14. That the Kumar having died at about midnight it was not possible to make the necessary arrangements for his cremation at night and in the following morning his dead body was taken out in a procession befitting his position in life to the cremation ground accompanied by a large number of men-distributing coins to the poor as it passed along and there he was duly cremated and his dead body was burnt to ashes.

15. The late Kumar had insured his life with the City of Glasgo Life Insurance Co. and the said Col. Calvert swore an affidavit, by way of a certificate of death at the instance of the aforesaid Life Insurance Co., before Mr. Crawford I. C, S. (Retired) the then Deputy Commissioner of Darjeeling. The latter also recorded a certificate to that effect. They are given below :—

This is to Certify that Kumar Romendra N. Roy of Bhowal Zeminder of the District of Dacca aged about 27 years stopped at the house named Stepside Darjeeling and died there on the 8th day of May 1909 from an acute attack of Billiary Colic,

Sd/- W. N. Crawford.

Deputy Commosioner and Justice of the
Peace, Darjeeling .

Certificate A.

Policy No. 74789

Life Kumar Romendra Narayan Roy

Claimant-Rani Bibhabati Debi.

City of Glasgow Life Assurance Company

Certificate of death.

To be granted by the Medical Practitioner who attended in his last illness.

“I, John Telfa Calvert, Lt. Col, I. M. S., Civil Surgeon, Darjeeling, do hereby solemnly declare that I have known Kumar Romendra Narayan Roy for 14

days, and have been his consulting Medical attendant for 14 days. That I attended him in his last illness, that he died aged about twenty-seven years at Darjeeling at 11-45 O'clock P. M. on the 8th day of May 1909 after an illness of.....years..... months..... days ; the cause of his death following upon an acute of Billiary Colic (Gallstone). The above was inferred from symptom and appearance during life that the symptoms of the disease which caused death were first observed by me on May 6th 1909, and that the attack became acute on the morning of the 8th and he died the same evening.

Sd/—J. T. Calvert

Designation—Lt. Col. I. M. S.

Civil Surgeon

Place, Darjeeling.

Declared before me this seventh day of July 1909.

Signature—Sd/—W. M. Crawford

Justice of the Peace and District Magistrate, Darjeeling.

16. That after the death of the second Kumar, the defendent No. 1 with the rest of the members of the party who had accompanied the Kumar to Darjeeling returned to Jaidebpur and she duly performed the Sradh ceremony according to the Hindu rites prescribed for persons dying a natural death, and all the necessary arrangemetns for the performance of the ceremony

were made by the first and third Kumars who were then surviving. She then lived in Joydebpur Palace as a Hindu widow in the same mess with the two other Kumars, Ronendra Narayan Roy, husband of defendant No. 2 and Robindra Narayan Roy, husband of defendant No. 4 and managed her share of the estate, jointly with the other shares. In the year 1911, after the Court of wards assumed charge of her share of the estate, she left for Calcutta and since then she has been living there. The possession of the Court of wards has always been on behalf of defendant No. 1 and consequently such possession has been adverse to that of the plaintiff.

17. That in 1910 the eldest Kumar died followed by the death of the youngest Kumar in 1913. The Court of Wards has since been in charge of the entire estate of the three widow until 1919 when the share of the youngest lady has been released by the Court of Wards but it is still managed by its Manager jointly with others under the Court of Wards. The sisters of the Kumars and the nephews along with other relations, and dependants lived in the Raj Palace at Joydebpur as members of the Raj family till about 1914 and their expences used to be borne by the Estate up till that time. These advantages were discontinued with the result that all of them had to

shift for themselves the sisters being allowed only a monthly allowance of Rs 200/- each according to the provisions contained in the Will of the late Raja Rajendra Narayan Roy. Certain compassionate allowance and pittances that used to be paid during the time of the Raja and of the Kumars to poor and distant relations and other dependants of the Raj Family were in most cases stopped and in other cases greatly reduced. In short the Court of Wards had to withdraw all allowances, pittances and other advantages not provided for in the Trust Deed or the Will left by Raja Rajendra Narayan Roy with the result that the administration of the estate by the Court of Wards became greatly unpopular with most of the relations and dependants of the Kumars. Besides there has been several disputes and litigations between the Court of Wards and the sisters of the Kumars relating to extensive Zemindari properties and a portion of the ancestral homestead of the Kumars and other matters.

18. That the estate possesses big forests in Bhowal parganah and before the assumption of charge by the Court of Wards the tenants of the Estate used to cut trees freely from the said forest on payment of a nominal price only and in some cases without any payment at all and although the tenants had no right

customary or otherwise to cut trees in the way they did the Bhowal estate did not generally interfere with such illicit cutting. They cut trees not only for fuel and other personal use but many used to make a living by illicit cutting and selling of timbers. The Court after assuming charge established a forest department for the protection and preservation of the forest with the result that not only illicit cutting and selling had been stopped but the tenants are now to purchase trees from the said forest even for their fuel. They have come to dislike the administration of the Court also on account of the inforcement of the certificate procedure and other rules of collection and management strictly according to the Court of Wards Manual which the Court was bound to do.

19. That when such was the state of affairs the plaintiff appeared in Dacca in 1920. He was an ascetic and he lived in the open on the Bucklrd Bund in all seasons and all through the day and night. He spoke in a up-country dialect and nothing else. For four months he lived on Bund where people in numbers flocked and talked to him. He was credited with possoessing some occult powers commonly claimed by men of his class and he used to distribute medicine to many people, He told people who visited and enquired about his past life that he belonged to the

Punjab, had left his parents and turned an asectic at the age of 10 or 12 years.

20. That it is absolutely false that the Second Kumar was poisoned, that he became unconscious and was taken to the cremation ground at night, that rain and storm came on thereafter, that the carriers of the dead body left it there and took shelter at some other place, that they returned after the rain subsided and that they found that the body was not there and so returned home. It is also false that a few days after he recovered consiousness and found himself in the midst of a number of Naga Sannyasis, that he recovered as a result of their treatment and that he continued to live with them and that he almost lost his memory as the result of poisoning, that he began to roam about in distant places in company with and as one of them that he became used to their mode of life and became disgusted with this world.

21. That it is absolutely false that many people recognised and many others guessed the plaintiff as the Second Kumar while he was staying on the Buckland Bund that the relations of the plaintiff and the local Zemindars were convinced of his identity and pressed him to declare as such, that the Bhowal tenants and relations recognised or admitted him to be the Second Kumar at a big meeting as alleged in the

plaint or that the tenants of the Estate paid nazar or rents to him that the notification by Mr. Lindsay was issued at the instigation of and in collusion with the defendant No. 1 and her brother or that it was issued owing to any obstruction to the realisation of rent by the Court of Wards.

22. That some designing persons had begun to give out that the plff was the Second Kumar of Jaideb pur and began to create disturbance and the Board of Revenue, Bengal, considered it necessary to make a thorough enquiry into the matter. A thorough and exhaustive enquiry was then started in course of which a large number of compitent persons and documents were examined and the Board after beeing thoroughly satisfied that the Second Kumar died at Darjeeling on the 8th. of May, 1909 and was cremated on the following day, made a pronouncement to that effect and the then District Magistrate Mr. Lindsay issued a notice mentioned in paragraph 4 of the plaint warning the tenants against any payment.

23. That the order of the Board dated 30th. March 1927 mentioned in paragraph 5 of the plaint has been wholly misconstured by the plaintiff. The Board clearly stated in that order that in its previous enquiry it was proved that Kumar Romendra Narayan Roy died in Darjeeling in 1909 and that his body

was duly cremated and infact after the aforesaid enquiry directed the Collector to issue a declaration that the Board had conclusive proof that the dead body of Second Kumar of Bhowal was cremated in Darjeeling and that the Sadhu who was giving himself out as the Second Kumar was an impostor. The Board in that order never admitted that the plaintiff was making any collection of rent and in fact never made any such collection.

24. That the plaintiff and some desiging persons who to serve their own end set him up as the second Kumar. of Bhowal were responsible or breaches of the peace involving riots and murder and the Magistrate of the District with a view to prevent disturbances of public tranquility served notices on him from time to time forbidding him to enter the jurisdiction of Joydebpur Police Station and one such notice was server by the District Magistrate in April 1929. It is absolutely false that he realised any rent or Nazar at the time or that such alleged action on his part was the occasion for the issue of the notice under Section 144 Cr. P. C, mentioned in paragraph 6 of the plaint.

25. That the allegations regarding the plaintiff having all-along realised rent from the tenants or that they refused to pay or stopped payment of rent to the court of wards or that the plaintiff was ever in possession of

any share of the Bhowal Estate or that any attempt was made on the part of the defendant No. 1 to send men to the Muffusil to prevent payment of rent to the plaintiff or to threaten or oppress them with that object in view as alleged in paragraph 9 and other allegations contained in his deposition as quoted in paragraph 7 of the plaint are absolutely false. The tenants have all along paid and are paying rent etc to the court of wards. The court. of wards as usual filed certificates against a number of defaulters last year and the defendants are informed that the plaintiff with some ulterior motive caused objections to be filed in the name of tenants in the certificate Court. When those objections were rejected he caused a number of suits to be filed on wholly frivolous and vexatious grounds for cancellation of a number of certificates. It is false that the certificates filed on behalf of defendant No. 4 are invalid, ultra vires or without jurisdiction alleged in paragraph 9 of the plaint. The defendant No. 3 is the validly adopted son of defendant No. 4,

26. That the defendant No, I was present at the death of her husband and he has and can have no doubt in her mind even after having seen him severel times in Calcutta that the plaintiff is an impostor.

27. That the defendants deny that the identity of the plaintiff as the Second Kumar of Bhowal has been admitted by the defendant No. 2 and these defendants further state that if there has been admission by defendant No. 2 then this must have been made from indirect motive or as the result of entreaties or pressure on behalf of the plaintiff and his supporters or by mistake. Moreover in view of her feeling towards the other defendants and the line of action she has consistently taken in all litigations between the sisters of the deceased Kumars and the court of wards, any statement or admission made by her regarding the identity of the plaintiff is of no value and should not be used in support of the plaintiff's case.

28. That the plff is not entitled to injunction either temporary or permanent and no case for injunction has been made out.

29. That whatever is not specifically admitted in this written statement is to be considered as denied by these defdts.

30. That the plff. is not entitled to any relief claimed in the plaint and the suit may be dismissed with cost.

I. E. Bignold, Manager, Bhowal Estate do hereby declare that the statement contained in paragraph 3 of the written statement are

(L)

true to my knowledge and those in paragraph 9, 11 to 22 and 24 to 27 are true to my knowledge, information and belief and the rest are submissions to Court and I sign this to-day the 7th day of September 1930 at my office at Jaidebpur. Sd/- E. Bignol.

Addl. Written Statement.

1st. Sub-Judge's Court, Dacca.

Filed 4 June, 1931.

Sd/- S. C. C.

In the Court of the 1st. Sub-Judge, Dacca.

T. S. No. 70 of 1930.

Ramendra Narayan Roy Plff.

Versus.

Srimati Bibhabati Debi and others ... Defdts.

Further Statement on behalf of defdts Nos. 1 and 3 is as follows :—

1. That the amended plaint cannot be accepted in as much as the plff has not paid the proper Court-fee.

2. That the claim of the plff to the properties is barred by limitation.

3. That the amendment to the plaint is bad in law and equity on the ground amongst others that it alters altogether the nature of the suit.

Made part of the
original defence
Sd/- H. K. C.
Sub-Judge,
4-6-31.

4. That the plff has no right, title, interest or possession in any of the properties mentioned in the schedule of the plaint as amended and as such he is not entitled to any of the reliefs claimed.

(Lii)

5. That the plff. has not included a third share of all the properties known as the Bhowal Estate left by the deceased husband of the defdt No. 1. the late Second Kumar left not only the properties described in the amended schedule to the plaint but also a large number of tenures and other valuable properties which since his death are being possessed by the defendant No. 1 in her own right as also by right of adverse possession.

6. That as the plaintiff renounced the world and retired from all worldly interests and entered a religious order and became a perfect Sannyashi having performed all the necessary religious rites and ceremonies of a Sannyashi much more than 12 years ago and as he led the life of Sannyashi his claim to the properties is not maintainable.

7. That the properties have not been properly valued.

I, F. J. Griffiths Manager, Bhowal C. W. Estate do hereby declare that the statement contained herein are true to my information and belief and I sign this to-day the 3rd. day of June, 1931,

P. J. Griffiths by his Attorney.

Sd/-P. K. Ghose.

Appendix (B)

Important Dates in the Suit.

**Birth of 2nd Kumar—Kumar Ramendra Narayan Roy—
28th July, 1884.**

Marriage—May, 1902.

Starting Darjeeling—18th April, 1909.

Alleged Death—8th May, 1909.

**Appearance of the Plff. in the Buckland Bund in the
garb of a Sanyasi—Dec, 1920 or Jan. 1921.**

His Visit to Kasimpur—about 5th April, 1921.

**His Arrival at Jaidebpur and stay at Madhab-bari—
12th April, 1921.**

He stays at Jyotirmoyee's House—13th April, 1921.

**He Leaves Jyotirmoyee Debi's house and Jaidebpur—
14th April, 1921.**

Plff. goes to Saibalini's house—About 24th April, 1921.

**Plff. arrives at Jaidebpur and stays at Jyotirmoyee's
house—on 30th April, 1921.**

**Plff. declares his Identity as the 2nd Kumar—4th
May, 1921.**

**Satya Babu sees Mr. Lethbridge and makes over to him
the affidavits of death, and asks him to call for
the originals from the Insurance office—5th
May, 1921.—7th May, 1921.**

**Satya Babu's letter in 'The Englishman'—9th May,
1921.**

II.

Board of Revenue Call for Insurance Papers ; Mr.

Lindsay's report sent by G. P.—10th May, 1921.

Satya Babu and G. P. and a Barrister go to Darjeeling
and collection of evidence of death begins—
Before 15th May, 1921.

The mammoth meeting at Jaidebpur—15th May, 1921.

The Maharaja of Burdwan writes to Satyabhama Debi—
16th May, 1921.

The two sisters and Gobinda Babu apply to the collector
for an enquiry—Between 16th May and
21st May, 1921.

Plff. interviews Mr. Lindsay—20th May, 1921.

Sub-Inspector Momtajuddin goes out to enquire to trace
the antecedents of the plff.—31st May, 1921.

Plff. declared an Impostor by Mr. Lindsay—On 3rd
June, 1921.

Plff. goes to Dacca—7th June, 1921.

Satyabhama Debi comes to Dacca—4th July, 1922.

Her letter to the 2nd Rani tendered and refused—
24th July, 1922.

Dharamdas Naga arrives at Dacca—26th August, 1921.

Satya Bhama Debi dies—15th December, 1922.

Her Sradh performed by Plff.—on 25th December,
1922.

Plff. interviews Mr. K. C. De, (I. C. S).—9th August,
1923.

Plff. goes to Calcutta and meets the 1st Rani—July-
August, 1924

Memorial presented to the Hon'ble Board of Revenue,
Bengal—8th Dec., 1926.

III.

The Memorial rejected—30th March, 1927.

Plff. returns to Dacca—October, 1929.

Plff. collects rent.—1929.

Notice under Sec. 144 Cr. P. C. served on Plff. forbidding him to enter the jurisdiction of Jaidebpur Police Station—April, 1929.

Withdrawal of the said proceedings under Sec. 144 Cr. P. C. by an order of the District Magistrate—30th May, 1929.

Suit instituted by Plff.—24th April, 1930.

WRITTEN STATEMENTS FILED BY :

Deftds. No. 1 & 3—9th September, 1930.

Do. No. 4.—25th October, 1930.

Trial commenced in open court—27th November, 1933.

Plff's evidence closes and Defence evidence begins—6th February, 1935.

Defence evidence closes—12th February, 1936.

Defence Argument begins—13th February, 1936.

Defence Argument closes and Plff's Argument begins—31st March, 1936.

Plff's Argument closes—20th May, 1936.

THE JUDGMENT DELIVERED—At 11 A. M.
24th August, 1936.

APPENDIX "C"

Important Witnesses examined in the suit.

For the Plaintiff :—

1. Sreejukta Jyotirmoyee Devi—the sister of the Plaintiff.
2. Sreejukta Sarajubala Devi—the 1st Rani—Defendant No. 2.
3. Sreejut Jitendra Mukherjee alias Billoo—Nephew of the Kumar.
4. Sreejut Chandra Shekhar Banerjee—Son-in-law of Jyotirmoyee Debi.
5. Sreejut Sagar Banerjee—Son-in-law of Jyotirmoyee Debi.
6. Sreejukta Sonamoni Debi—Mother's sister of the Kumar.
7. Sreejukta Shudhangshubala Debi—Mother's sister of the Kumar.
8. Sreejut Kedareswar Bhattacharjee—Mother's brother.
9. Sreejut Radhika Goswami—Brother's son of Satyabhama Debi.
10. Sreejut Kumud Mohan Goswami—Brother's son of Satyabhama Debi.
11. Sreejut Lalmohan Goswami—Brother's son of Satyabhama Debi.
12. Sreejut Suresh Chandra Mukherjee—a step-son of Kripamayee Debi, Kumar's Paternal aunt.

13. Sreejut Basanta Mukherjee—Cousin to Suresh Mukherjee.

14. Sreejukta Kuladasundari Debi—Widow of Prasanna Kumar Mukherjee, a first cousin of Raja Rajendra Narain.

15. Sreejukta Kamal Kamini Debi—Relation of the Kumar.

16. Sreejukta Sibamohini Debi—Relation of the Kumar.

17. Sreejukta Anantakumari Debi—Relation of the Kumar.

18. Sreejut Ashutosh Ganguli—Relation of the Kumar.

19. Sreejukta Pura Sundari Debi—1st Cousin of the Second Rani and daughter of Babu Protap Narayan Mukherjee, zeminder of Uttarpara.

20. Sreejukta Sorojini Debi—Aunt of the Second Rani and widow of late Babu Protap Narayan Mukherjee of Uttarpara.

21. Sreejukta Kulada Sundari Debi.

22. Babu Manmohan Roy.

23. Babu Jogesh Chandra Roy, B.A., Head Master, H. E. School.

24. Babu Charu Chandra Das Gupta, Head Master of a school and sometime Lecturer of a College.

25. Babu Manindra Mohan Bose, M.A.—Lecturer, Calcutta University.

26. Babu Nabendra Nath Basak—zemindar and Banker.

27. Babu Ramesh Chandra Chowdhury—zemindar.

(c)

- 28.—Babu Amulya Kumar Sen, B.L.
29. Babu Hiranmoy Biswas, pleader and zemindar.
30. Babu Govinda Chandra Roy,—Advocate, Calcutta High Court.
31. Mr. V. J. Stephen—Manager of a firm.
32. Mr. N. K. Nag—Barrister-at-Law, Calcutta High Court.
33. Rai Saheb Surendra Chandra Bhattacharya—Retd. Inspector of Police.
34. Rai Saheb Ananda Chandra Ganguly—Retd. Asst. Surgeon.
35. Dr. Narendra Nath Mukherjee, Civil Surgeon (Retired).
36. Mr. Kalimohan Sen, Retired Deputy Magistrate.
37. Mr. Harendra Kumar Ghose (Retired Deputy Magistrate).
38. Mr. Subodh Kristo Basu,—Nephew of Raja Benoy-kristo (Calcutta).
- 39.—Mr. P. C. Gupta—Engineer.
40. Mr. G. C. Sen—Insurance Agent.
41. Mr. R. Dass—Insurance Agent.
42. Sj. Sarat Chandra Ghosh—Retired Inspector of Police.
43. Dr. Sailendra Nath Sen, M.B.
44. Sj. Mahatab Ghose, Deputy Magistrate.
45. Sj. Haladhar Roy, a millionaire.
46. Sj. Ashutosh Banerjee, zemindar, Murapara, Dacca.
47. Pandit Sreeram Shastri, Calcutta.
48. Sj. Ramani Mohan Basak, Retired Agent, Imperial Bank (Branch).

(d)

49. Sj. Lalit Mohan Basak, Retired Railway Employee.
50. Sj. Upendra Chandra Chatterjee, pleader, Munshiganj, (Dacca).
51. Sj. Raimohan Goswami, pleader, Munshiganj, (Dacca).
52. Sj. Sanyasi Charan Roy, pleader, Dacca.
53. Sj. Rebati Mohan Ghose, Pleader, Dacca.
54. Mr. Bhuban Mohan Pait, Pleader, Dacca.
55. Mr. Santibhusan Mukherji, Pleader, Dacca.
56. Mr. Ramkamal Chakravarty, Pleader, Dacca.
57. Mr. Bhupendra Mohan Ghosh.
58. Dr. Debendra Mohan Bose—A medical Practitioner of repute.
59. Mr. Ramratan Chhiba—Engineer.
60. Mr. Paresh Nath Biswas—A respectable Talukdar.
61. Swami Nityananda Saraswati.
62. Baba Darsandas Naga.
63. Mr. Sitanath Mukherji.
64. Mr. Bilas Chandra Chaterji, B.E.
65. Dr. Prankrishna Acharya, Calcutta.
66. Dr. Radhakumud Mukherji, M.A., Ph.D., Professor Lucknow University.
67. Mr. Hiralal Roy, A. B. (Harvard), Doctor of Engineering (Berlin), Member of the Institute of Chemical Engineers (London).
68. Rai Saheb Padmini Mohan Neogy.
69. Mr. Surendra Nath Maitra—M.A., B.A. (Cantab), I.E.S. (Retd.)—Formerly Principal, Dacca Intermediate College.

70. Mr. S. C. Chaudhuri, B.A.—Handwriting Expert, Calcutta.

71. Mr. J. P. Ganguly—Vice-Principal and later acting Principal of Government Art School, Calcutta.

A Portrait Painter and Sculptor of great repute.

72. Mr. Winterton, Photo Expert.

73. Dr. Bradley, M.D. (Canada), Ch.M. (Canada), Fellow of the Royal Society of Tropical Medicine.

74. Lt. Col. K. K. Chatterjee, F.R.C.I., Fellow of the Royal Society of Medicine, London, Fellow, State Medical Faculty, Bengal; of the Royal Society of Tropical Medicine, Member, Bio-Chemical Society, London, Surgeon Government Medical School, Calcutta and later its Superintendent and retired as such. Now Senior Professor of Surgery Carmichael Medical College, etc. etc.

75. Lt. Col. MacGilchrist, I.M.S., (retd.), M.B., Ch.B. (Edin), M.D (Edin), M.R.C.P. (London), D.Sc., (Edin), Prof. Physiology, Calcutta Medical College and D.S (Pharmacology), etc.

76. Lt. Col. Berkley Hill, I.M.S., M.D. (Oxford), M.A., Supdt. European Mental Asylum, Ranchi (Behar).

77. Sj. Hemendra Kishore Acharya Choudhury, zemindar Muktagacha, Mymensingh (Bengali).

78. Sj. S. D. Ghosal, Barrister-at-Law, Calcutta.

79. Sj. Akhil Chandra Pakrashi, zemindar, Sthal, Pabna (Bengal).

80. Sj. Purna Chandra Bhattacharya, Sub-Editor, "Dacca Prokash".

81. Sj. Prafulla Kumar Mitra, Pleader, Dacca.

82. Sj. Gouranga Hari Kabyatirtha, Sub-registrar.

83. Mr. Somesh Chandra Bose, a Mathematical Prodigy.

84. Sj. Digendra Narayan Ghose, Talukdar of Harbaid
—A staunch supporter of the Kumar.

85. Sj. Rajkumar Mukhuti, Mukhtear, Mymensingh.

86. Sj. Arun Kanta Nag.

87. Sj. Rashik Chandra Roy Mohashaya.

89. Sj. Umanath Ghoshal, Manager of Jatra Party.

88. Sj. Ramesh Chandra Sen of Senbari, Mymensingh.

90. Sj. Hari Charan Acharjee—Manager of a Kabi
Party.

91. Mr. Nagendra Rakshit—Manager of a concern of
Messrs. Tata Iron and Steel Co. Ltd., President, Bengal
Industrial Association.

For the Defendants :—

1. Sreejukta Bibhabati Debi—the Second Rani, wife
of the Second Kumar—Defendant No. 1.

2. Sreejukta Ananda Kumari Debi—the Third Rani,
Defendant No. 4.

3. Rai Satyendranath Banerjee Bahadur,—Brother
of the Defendant No. 1, the Second Rani.

4. Sreejukta Sukumari Debi alias Alta Debi—
cousin of the Second Rani and daughter of late Ram-
narayan Mukherjee, zemindar of Uttarpara.

5. Saibalini Debi—Sister of Phanibhusan Banerjee.

6. Sreejut Shyamadas Banerjee—Son of a cousin of
Second Rani's mother.

7. Sreejut Phanibhusan Banerji—a relation of the
Second Kumar.

8. Babu Birendra Banerjee.

9. Rai Saheb Jogendra Nath Banerjee.

10. Dr. Ashutosh Das Gupta.
11. Rai Saheb Umesh Chandra Dhar.
12. Babu Ramanath Roy—a Talukdar.
13. Babu Rajendra Nath Seth—Hony. Magistrate, Chinsura, Hooghly.
14. Rai Sarada Prasanna Ghosh Bahadur—Deputy Magistrate (Now a District Magistrate).
15. Mr. Rankin, I.C.S. (retd.)—This witness died before signing the deposition.
16. Mr. K. C. De, I.C.S., (Retd.).
17. Mr. J. N. Gupta, I.C.S. (Retd.).
18. Mr. K. C. Chunder, I.C.S.
19. Mr. Debabrata Mukherjee—Retd. Subordinate Judge.
20. Mr. Lindsay, I.C.S. (Retired).
21. Mr. Meyer, Former Manager of Bhowal Estate.
22. Mrs. Meyer.
23. Mr. O. C. Ganguly, Attorney-at-Law, Calcutta.
24. Mr. R. C. Dutta, Deputy Collector.
25. Mr. Mohini Mohan Chakravarty—Formerly Asst. Manager.
26. Mr. H. M. Crawford, formerly Deputy Commissioner, Darjeeling.
27. Mr. Pliva.
28. Mr. Percy Brown, I.E.S. (retd.)—Artist—Former Principal Government Art School, Calcutta.
29. Mr. Mussle White—Photo Expert—Managing Partner of Messrs. Bourne and Shepherds, Calcutta.
30. Lt. Col. Pulley.

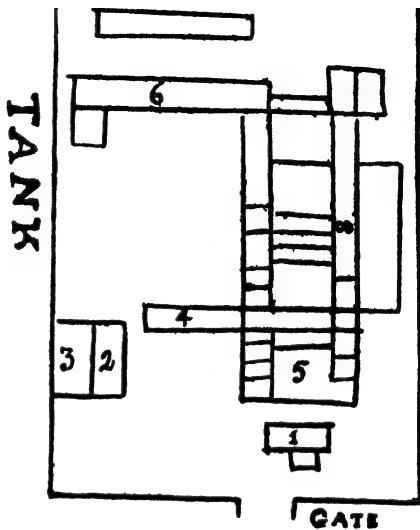
31. Babu Jagadish Chowdhury, Pleader, Presidency Small Causes Court, Calcutta.
32. Babu Shaubhagya Chand Seth.
33. Babu Saradindu Mukherjee.
34. Babu Anutosh Das Gupta—Prof. Bangabashi College, Calcutta.
35. Khan Shaheb A. M. A. Hamid.
36. Rai Bahadur Atul Prosad Roy Chaudhury, zemindar, Kasimpur.
37. Major Thomas, I.M.S., M.D. (Durham), M.R.C.P. (London).
38. Lt. Col. Denham White—L.R.C.P., M.R.C.S., M.B.B.S (London), Sometime Professor of Surgery, Medical College, Calcutta.
39. Mr. Charles E. Hardless, B.A.—Document Expert.
40. Major Dhunjibhoy, I.M.S., M.B.B.S (Bombay), Expert in Mental Diseases.
41. Lt. Col. Calvert, I.M.S (Retd), Formerly Civil Surgeon, Darjeeling.
42. Prof. Haran Chandra Chakladar, M.A.
43. Sreejukta Gita Debi.
44. Mr. R. N. Banerjee.
45. Lt. Raghubar Singh—Hony. Magistrate, (Punjab).
46. Dharamdas Naga.
47. Harnamdas.
48. Babu Surendra Chakravarty.
49. Moulvi Montazuddin.
50. Dr. Jatindra Mohan Sen.

Appendix (D)

Sketches and Maps and their references.

- I. Sketch of the Rajbari (Joydebpur) —Vide Page 22
- II. Irregular Scar over the top of the
outer ankle of the Plff. —Vide Page 372
- III. Left leg of the Plff. —Vide Page 389
- IV. Sketch of the "Stepaside,"
Darjeeling— —Vide Page 541
& 503
- V. Sketch of Darjeeling showing the
relative positions of the two 'Sasans'
—roads leading there to—'Stepaside'
and others. —Vide Page 504
- VI. Sketch showing the positions of the
two 'Sasans' (Cremation grounds)—
old and new— —Vide Page 588

SKETCH NO. 1.



Joydebpur Rajbari (Vide P. 22).

SKETCH NO. II.

Irregular Scar over the top of
the left outer ankle.

(Vide P. 372).



SKETCH NO. III. (Left leg).

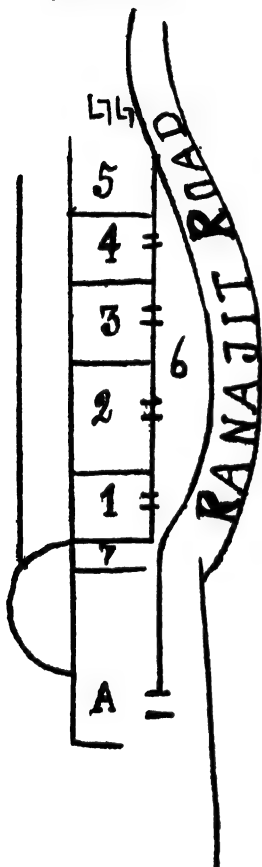
(Vide P. 389).



SKETCH NO. IV.

"Step Aside"

(Vide P. 541 & 503).



APPENDIX E.

*Table showing the Page marks of this
Volume and the Corresponding marks
of the Original Judgment*

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GLOSSARY.

A.

Ardhodoy Yog : A particularly happy combination of the sun with some stars, etc., regarded highly auspicious for bathing in the Ganges.

Astami Snan : Bathing ceremony held annually on the 8th day of the New-Moon in the Bengali Month of Chaitra in the river Brahmaputra.

Atmo-parichaya : Declaration of one's identity.

B.

Bagi : Bubo.

Bou, Bow, Bahu : Daughter-in-law.

Barga : Tilling other's land on half-produce basis.

Baradalan : Main Building.

Basha : Rented House ; temporary residence. .

Batis : Cups.

Bathan : A place where cows or buffaloes are kept for dairy purposes.

Benamder, Binamder : One in whose name the conveyance is executed though he is not the real owner.

Bhadraloks : }
Bhadralogs : } Gentlemen.

Bhaiphonta : The ceremony of painting the foreheads of brothers by their sisters (prevalent in Bengal—supposed to increase the longevity of the brother) with sandal-wood paste, held once a year in the month of Kartick.

Bhaighhatu : Ceremonious gift of Chhatu (fried and ground barley) by sister to the brother on the last day of the month of Chaitra.

Bhikarini : Begger woman.

Bichar : Trail.

Brahmacharya : Strict discipline and abstinence from sexual pleasure.

C.

Chanda : Subscription.

Char-a-banc : A long light vehicle with transverse seats.

Chatan : A lawn.

Chauki : Wooden cot.

Chik : A kind of screen.

Chakkar : A place at Joydebpur where Jyotirmnyee Debi's hemestead is situated.

Chillai : The river which passes by Joydebpur.

- Chira : Flattened rice.
 Chela : Disciple.
 Chiriakhana : Zoological Garden.
 Chokha : Pointed ; Sharp.
 Chukker : A race.
 Chur : Island in the midst of a river.
 Chura : Purification ceremony of 1st tonsure (a religious observance among Hindus).
 Cutcheree : Office.

D.

- Dehi : A revenue circle.
 Doldewa : Rubbing down a horse.
 Dhuni : A fire (esp. of Sanyasis).
 Didi : Elder sister.
 Dishilok : Local People ; People of ordinary run.
 D, or D.W : Witness for the Defendants.
 D₁ Defendant No. 1
 D₂ " " 2
 D₃ " " 3
 D₄ " " 4
 Defdt Defendant.
 Dol : A Hindu Spring festival, held in honour of Lord Krishna.

E

Ekoddista : obsequial rites with offering of viands to the departed soul.

Elachis : Cardamoms.

Eleka : Jurisdiction.

F

Fakir : A mendicant : A Pauper.

Farash-khana : A drawing room with sitting accommodations for visitors and guests.

G

Gan : Music ; Song ; Musical entertainment.

Gan Jatra : Opera (Jatra) performance.

Garibarenda : Main Portico.

Gerua : Ochre-dye, Ochredyed.

Gomosta : A village accountant ; a rent collector.

Gotra : Family, race, lineage, kin ; Name of a Rishi or saint as the founder of a particular family or race.

Gourbarna : White complexion ; Fair Complexion.

Ghar Jamai : Son-in-law who lives permanently in the house of a father-in-law.

Golbarenda : The Round Veranda.

Grihaprobesh . Ceremonious entry into a new house' or building.

Guru : Religious preceptor.

Gurujan : Superiors ; Seniors.

H

Hat : A periodical market ; Market place.

Howakhana : A room for recreation,

J

Jolarpar : Name of a locality in the Bhowal forests.

Jata : Matted hair, as ascetics have.

Jatadhari : One having matted hair.

Jatra : A sort of dramatic (opera) entertainment,

Jatrawalas : The masters or managers of such parties.

Jatra-gan : Opera performance.

K

Kabirajes : Doctors trained according to indigenous Ayur-veda system of treatment.

Kabi or Kabigan : A sort of musical contest (highly intellectual, but now a bit degenerated) prevalent in Bengal, the topics being generally mythological.

Karanja : The word for all colour other than dark.

Karta : The head of the family.

Kata : Brown.

Khabla : Literally "a paw" and here means attacked or struck with a paw.

Kerani Babus : Clerks ; writers.

Khada : A large measure of land prevailing in Bengal varying in different places.

Khajanchi : Cashier ; treasurer.

Khansama : Servant.

Kichhu lalcha : A bit reddish.

Kirtan : Musical performance in praise of Lord Krishna.

Kushaputtalika : An effigy made of 'Kusha' grass to burn as a representative of a deceased person, whose corpse cannot be found.

L

Lalcha : Reddish.

Lengti : Loin cloth.

Lungi : A small piece of coloured loin cloth worn generally by Mahomadans in Bengal.

M

Madhab : Name of a deity.

Madhab bari : The temple or shrine of Madhab.

Mahut : Elephant driver.

Malik : Owner ; overlord.

Mama : Maternal uncle.

Mamima : Maternal aunt.

Math : Lawn.

Miras : Permanent and hereditary lease.

Missil : Procession—(on the occasion of Janmastami festival at Dacca)

Mistry : Mason

Mosahebs : Flatterers ; Sycophants.

Mota : Fat ; bulky.

Mukhagni : The fire that is put first on the face of a corpse in cremating it (Hindu custom).

N

Naibs : The principal officers in charge of a revenue circle.

Nangalbund : A place on the bank of the Bramhaputra in the district of Dacca where a great congregation takes places for a dip in the holy river.

Nauch Ghar : Dancing Hall.

Najar, Nazar : A present given to superior and generally to a landlord.

Niramis : Vegetable diet.

O

Ostad : Master Musician

P, or P.W. : Witness for the plff.

p : Page.

Plff. : Plaintiff.

Palwan. : Athlete ; wrestler.

Parak Pinda : Pinda or Viands ceremonially offered to the departed soul.

Pattar : Dish ; Plate.

Pilkhana : The stable for elephants or house or place where elephants are kept.

Posta : A raised platform ; Embankment.

Pronam : Bowing or Saluting by touching the feet.

Pundits : Sanskrit Scholars,

Punyah : A ceremony or festival held by the land-lords of Bengal on a sacred or auspicious day, when they begin to collect rents from tenants for the New Year.

Purohit : Priest.

R

Rath : Car Festival.

S

Sada : White.

Sada dhabdhaba : Excessively white.

Sannyas : Complete ascetism and renunciation of the world.

Sasan : Cremation ground.

Sasanbari or Sasaneswari : Family burning ground of the Jaidebpur Raj family.

Shaheb Subo : Europeans or European like.

Shastras : Hindu Scriptures.

Sradh : Obsequial rites.

Tabla : A kind of musical instrument, a small sort of kettle-drum.

Tadbirkar : One who looks after a case or takes active part in the same.

Taluq : A manor, an estate.

Tan : Accent.

Tapan : Same as 'lungi'—a small piece of coloured loin cloth worn generally by Mohamadans in Bengal

Tara : Name of a diety.

Ticca garhi : Hackney carriage.

Tol : School for Sanskrit learning in the indigenous system.

Topee : Cap.

U

Upanayan : Ceremony of investiture with the sacred thread.

Vakalat-nama : A deed authorising one to act as one's pleader.

ERRATA

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